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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

~~No. 562~~
22

TIME, INC., APPELLANT,

vs.

JAMES J. HILL.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

FILED SEPTEMBER 18, 1965
PROBABLE JURISDICTION NOTED DECEMBER 6, 1965

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 562

TIME, INC., APPELLANT,

vs.

JAMES J. HILL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

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[fol. 1]

IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JAMES J. HILL, Plaintiff-Respondent,

against

TIME, INC., Defendant-Appellant.

STATEMENT

This is an appeal by Time, Inc. from the judgment herein in favor of James J. Hill, entered in the office of the Clerk of the County of New York on October 23, 1963, pursuant to the order of modification of the Appellate Division, First Judicial Department, dated and filed May 14, 1963, and from that order of modification in so far as it affirmed the order of judgment of the Trial Court entered May 21, 1963, on the issue of liability and failed to dismiss the complaint. The original judgment awarded damages to James J. Hill and to Elizabeth Selfridge Hill, who was then a party to this action. The Appellate Division modified that judgment by affirming it on the issue of liability and directing a new trial on the issue of damages. By order entered at Special Term on October 18, 1963, the judgment entered on May 21, 1962, was vacated and the action was discontinued as to Elizabeth Selfridge Hill and severed and continued as between James J. Hill and Time, Inc.

[fol. 2]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

JAMES J. HILL and ELIZABETH SELFRIDGE HILL,
Plaintiffs-Respondents,

against

JOSEPH HAYES, et al., Defendants,

and

TIME, INC., Defendant-Appellant.

STATEMENT UNDER RULE 234

Plaintiffs brought this action to recover damages against Time, Inc., defendant-appellant, because the mention of their name in a review by Life magazine of the play "The Desperate Hours" allegedly invaded their right of privacy in violation of the New York Civil Rights Law.

The action was commenced October 28, 1955, in the Supreme Court, New York County, by service of summons and complaint. Originally there were plaintiffs and defendants in addition to those named in the present caption. By stipulations filed herein the action was discontinued with respect to such other parties.

Plaintiffs' last pleading, the third amended complaint, was served March 25, 1958 and the answer thereto of defendant, Time, Inc., was served May 19, 1958. Trial was had before Mr. Justice Arthur G. Klein and a jury on April 4-17, 1962, and resulted in a verdict in the amount of [fol. 3] $75,000 ($50,000 compensatory and $25,000 punitive damages) in favor of plaintiff James J. Hill and against defendant Time, Inc.; and in the amount of $100,000 ($75,000 compensatory and $25,000 punitive damages) in favor of plaintiff Elizabeth Selfridge Hill and against defendant

Time, Inc. Said defendant's motion to set aside the verdicts and for a new trial was thereafter denied and judgment was entered on May 21, 1962, in favor of plaintiff James J. Hill for $75,425 and in favor of Elizabeth Selfridge Hill for $100,566.67 and for costs in the amount of $236.35 in favor of said plaintiffs, against defendant Time, Inc. Said defendant served and filed notice of appeal from that judgment on May 23, 1962.

The names of the parties to the action are as set forth in the title. There has been no change in parties or attorneys except as above stated.

[fol. 4]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 8139-55

JAMES J. HILL and ELIZABETH SELFRIDGE HILL, Plaintiffs,

against

JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, and TIME, INC., Defendants.

NOTICE OF APPEAL

Sirs:

Please take notice that defendant, Time, Inc., hereby appeals to the Appellate Division of the Supreme Court for the First Judicial Department, from each and every part of the judgment herein in favor of plaintiffs and against said defendant entered in the office of the Clerk of the County of New York on the 21st day of May, 1962.

May 22, 1962.

Cravath, Swaine & Moore, Attorneys for Defendant Time, Inc., 1 Chase Manhattan Plaza, New York 5, N. Y.

To:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for Plaintiffs, 20 Broad Street, New York 5, N. Y.

Clerk of the County of New York

[fol. 5]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JUDGMENT APPEALED FROM

The above-entitled action having been commenced by James J. Hill, Elizabeth Selfridge Hill, Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Clyde Hill, an infant, and Robert Hill, an infant, each by his guardian ad litem, James J. Hill, against Joseph Hayes, Marrijane Hayes, Howard Erskine, The Desperate Hours Company, Time, Inc., Paramount Pictures Corporation, Random House, Inc., The Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc., and Reader's Digest Association, Inc., and said action having been discontinued by the plaintiffs Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Clyde Hill, an infant, and Robert Hill, an infant, as to all the parties, and the action having been discontinued by the plaintiffs James J. Hill and Elizabeth Selfridge Hill as to the defendants Marrijane Hayes, Paramount Pictures Corporation, Random House, Inc., The Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc., and Reader's Digest Association, Inc., either by Order of the Court or by stipulation, and said action having duly come on for trial before Honorable Arthur G. Klein and a Jury at a Special and

Trial Term, Part 10, of this Court held in and for the said County of New York, at the County Court House in the said County of New York on the 4th, 5th, 6th, 9th, 10th, [fol. 6] 11th, 12th, 13th, 16th, and 17th days of April, 1962, and the issues having been duly tried, and the Jury having duly rendered a verdict in favor of the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, and a verdict in favor of the plaintiff James J. Hill and against the defendant Time, Inc., in the sums of $50,000 as compensatory damages and $25,000 as exemplary damages, and a verdict in favor of the plaintiff Elizabeth Selfridge Hill against the defendant Time, Inc., in the sums of $75,000 as compensatory damages and $25,000 as exemplary damages, and the costs of the plaintiffs having been duly taxed in the sum of $236.35;

Now, on motion of Mudge, Stern, Baldwin & Todd, Esqs., attorneys for the plaintiffs, it is

Adjudged, that the plaintiff James J. Hill, whose address is No. 409 Sound Beach Avenue, Old Greenwich, Connecticut, do recover of the defendant Time, Inc., whose address is 50th Street and Avenue of the Americas, New York, N. Y., the sum of $75,000, with interest from the 17th day of April, 1962, in the sum of $425.00, amounting in all to the sum of $75,425.00, and that the plaintiff James J. Hill have execution therefor; and it is

Further adjudged, that the plaintiff Elizabeth Selfridge Hill, whose address is No. 409 Sound Beach Avenue, Old Greenwich, Connecticut, do recover of the defendant Time, Inc., whose address is 50th Street and Avenue of the Americas, New York, N. Y., the sum of $100,000, with interest from the 17th day of April, 1962, in the sum of $566.67, amounting in all to the sum of $100,566.67, and that the plaintiff Elizabeth Selfridge Hill have execution therefor; and it is

[fol. 7] Further adjudged that the plaintiffs James J. Hill and Elizabeth Selfridge Hill do recover from the defendant

Time, Inc., the sum of $236.35 for their costs and disbursements and have execution therefor; and it is

Further adjudged, that the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company have judgment against the plaintiffs on the merits.

Judgment signed this 21 day of May, 1962.

James McGurrin, Clerk.

(Seal)

[fol. 8]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THIRD AMENDED COMPLAINT

Plaintiffs, for their Third Amended Complaint, allege as follows:

For a first cause of action against defendants Joseph Hayes, Howard Erskine and the Desperate Hours Company, plaintiff James J. Hill alleges:

1. On or about September 11-12, 1952, plaintiff James J. Hill and his wife, plaintiff Elizabeth Selfridge Hill, and their children were held hostage in their then home in Whitemarsh Township, Pennsylvania, by three convicts who had escaped from the federal penitentiary at Lewisburg, Pennsylvania.

2. In or about the year 1954, defendant Joseph Hayes wrote a novel entitled "The Desperate Hours", which was published by Random House, Inc. and distributed throughout the United States and abroad.

3. Said novel "The Desperate Hours" was a work of fiction describing a jailbreak near Indianapolis, Indiana by three convicts, the invasion by said convicts of the home of a family named "Hilliard", the holding of said family as hostages and the eventual killing or capture of said convicts.

[fol. 9] 4. During the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for

production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three other persons as limited partners, said partnership doing business under the firm name and style of The Desperate Hours Company.

5. During the year 1954, defendants Hayes, Erskine and The Desperate Hours Company sold the motion picture rights to the novel "The Desperate Hours" to Paramount Pictures Corporation; and said motion picture was filmed in or about the year 1955, and has been exhibited in every State of the United States and in various foreign countries.

6. The play "The Desperate Hours" opened in New York City on or about February 10, 1955, and continued its run until the fall of 1955.

7. Beginning with February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company knowingly, and without the consent of plaintiffs, or either of them, and contrary to the provisions of the Civil Rights Law of the State of New York, used said plaintiffs' name and portrait for purposes of trade and advertising within the State of New York, and in every other State of the United States, in connection with the businesses and trades of the defendants, all as hereinafter set forth.

8. In or about January, 1955, and as part of an advertising and promotional campaign to advertise and promote the novel, motion picture and play "The Desperate Hours", and to increase the commercial value of "Life" magazine, [fol. 10] defendants Hayes, Erskine and The Desperate Hours Company and defendant Time, Inc. collaborated with, and assisted, one another in the preparation and publication of a special photographic layout for use in the February 28, 1955 issue of "Life" magazine (a weekly magazine published by defendant Time, Inc. and distributed throughout the United States and abroad) wherein the plaintiffs Hill and their children were identified as the family depicted in the various versions of the fictional work entitled "The Desperate Hours".

9. In said February 28, 1955 issue of "Life" magazine, which was distributed in every State of the United States and in many foreign countries, there appeared a three-page article, with photographs, entitled "True Crime Inspires Tense Play", the body of said article stating as follows:

"The Ordeal of a Family
Trapped by Convicts Gives
Broadway a New Thriller,
'The Desperate Hours'"

"Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes' novel The Desperate Hours, inspired by the family's experience. Now they can see the story re-enacted in Hayes' Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.

[fol. 11] "The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. Life photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the scene of the crime."

The balance of said article consisted of photographs of a newspaper report of the true-life incident, and actual house in which plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" enacting scenes from said play in plaintiffs' former home. The following descriptive material appeared below the photographs of the newspaper headline and the actual house:

"Actual Event, as reported in newspaper, took place in an isolated house about 10 miles from Philadelphia.

There three convicts from Lewisburg penitentiary held family of James Hill as prisoners while they hid from manhunt. All three convicts were later captured."

A photostatic copy of said "Life" magazine article is annexed hereto as Exhibit A and made a part hereof as though set forth at length.

10. Said "Life" magazine article of February 28, 1955 was intended to, and actually did, convey the impression that the plaintiffs Hill and their children were the family fictionally depicted in the novel, play and motion picture "The Desperate Hours" and that said works constituted a dramatic portrayal of plaintiffs and a re-enactment of the [fol. 12] true-life incident in which plaintiffs Hill and their children were involved in September 1952, all of which, to the knowledge of defendants Hayes, Erskine and The Desperate Hours Company was false and untrue.

11. Said "Life" magazine article, insofar as it was based upon the purported connection between the plaintiffs Hill and "The Desperate Hours", did not in any way report news, whether current or otherwise, but on the contrary, took advantage of plaintiffs' name, likeness and private life, without cause or justification, to increase the commercial value of "The Desperate Hours" to the profit of defendants Hayes, Erskine and The Desperate Hours Company.

12. The use of plaintiffs' name and portrait, under the circumstances hereinabove described, was primarily for advertising, entertainment and trade purposes, and designed to thrill, astonish and move the readers of "Life" magazine by reporting the fact of the opening of the play "The Desperate Hours" in such manner as to falsely and sensationally link said fictional work directly with one specific family and one actual event out of the past.

13. Defendants Hayes, Erskine and The Desperate Hours Company had knowledge, prior to the publication of

the "Life" magazine article of February 28, 1955, that defendant Time, Inc. intended to identify the plaintiffs Hill and their children as the specific family portrayed in "The Desperate Hours", knew that such identification was false and untrue, and, nevertheless, thereafter collaborated with, and made it possible for, defendant Time, Inc. to prepare and publish said article.

14. By reason of the foregoing, plaintiff James J. Hill has been exposed and subjected to great emotional distress [fol. 13] and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business, social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait.

15. By reason of all of the foregoing, plaintiff James J. Hill has been damaged and is entitled to recover from defendants Hayes, Erskine and The Desperate Hours Company general damages in the amount of $50,000.00 and exemplary damages in the amount of $100,000.00.

For a second cause of action against defendant Time, Inc., plaintiff James J. Hill alleges:

16. Plaintiff James J. Hill repeats and realleges each and every allegation contained in paragraph 1-6 and 9 hereof, with the same force and effect as if herein set forth at length.

17. Defendant Time, Inc. is a New York corporation, which publishes and distributes in the State of New York and elsewhere "Life" magazine.

18. Beginning with February 28, 1955, defendant, Time, Inc. knowingly, and without the consent of plaintiffs, or either of them, and contrary to the provisions of the Civil Rights Law of the State of New York, used said plaintiff's name and portrait for purposes of trade and advertising within the State of New York, and in every other State of

the United States, in connection with the business and trade of said defendant, all as hereinafter set forth.

[fol. 14] 19. In or about January, 1955, and as part of an advertising and promotional campaign to advertise and promote the novel, motion picture and play "The Desperate Hours", and to increase the commercial value of "Life" magazine, defendant Time, Inc. and defendants Hayes, Erskine and The Desperate Hours Company collaborated with, and assisted, one another in the preparation and publication of a special photographic layout for use in the February 28, 1955 issue of "Life" magazine wherein the plaintiffs Hill and their children were identified as the family depicted in the various versions of the fictional work entitled "The Desperate Hours".

20. Said "Life" magazine article of February 28, 1955 was intended to, and actually did, convey the impression that the plaintiffs Hill and their children were the family fictionally depicted in the novel, play and motion picture "The Desperate Hours" and that said works constituted a dramatic portrayal of plaintiffs and a re-enactment of the true-life incident in which plaintiffs Hill and their children were involved in September, 1952, all of which, to the knowledge of defendant Time, Inc. was false and untrue.

21. Said "Life" magazine article, insofar as it was based upon the purported connection between the plaintiffs Hill and "The Desperate Hours", did not in any way report news, whether current or otherwise, but on the contrary, took advantage of plaintiffs' name, likeness and private life, without cause or justification, to increase the commercial value of defendant Time, Inc.'s publication, "Life" magazine.

[fol. 15] 22. The use of plaintiffs' name and portrait, under the circumstances hereinabove described, was primarily for advertising, entertainment and trade purposes, and designed to thrill, astonish and move the readers of "Life" magazine by reporting the fact of the opening of the play

"The Desperate Hours" in such manner as to falsely and sensationally link said fictional work directly with one specific family and one actual event out of the past.

23. By reason of the foregoing, plaintiff James J. Hill has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business, social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendant's unlawful use of plaintiff's name and portrait.

24. By reason of all of the foregoing, plaintiff James J. Hill has been damaged and is entitled to recover from defendant Time, Inc., general damages in the amount of $50,000.00 and exemplary damages in the amount of $100,000.00.

For a third cause of action against defendants Joseph Hayes, Howard Erskine and the Desperate Hours Company, plaintiff Elizabeth Selfridge Hill alleges:

25. Plaintiff Elizabeth Selfridge Hill repeats and realleges each and every allegation contained in paragraphs 1-14 hereof with the same force and effect as if herein set forth at length.

[fol. 16] 26. By reason of the foregoing, plaintiff Elizabeth Selfridge Hill has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her health and of her ordinary social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait.

27. By reason of all of the foregoing, plaintiff Elizabeth Selfridge Hill has been damaged and is entitled to recover from defendants Hayes, Erskine and The Desperate Hours Company general damages in the amount

of $100,000.00 and exemplary damages in the amount of $200,000.00.

For a fourth cause of action against defendant Time, Inc., plaintiff Elizabeth Selfridge Hill alleges:

28. Plaintiff Elizabeth Selfridge Hill repeats and realleges each and every allegation contained in paragraphs 1-6, 9, and 18-22 hereof with the same force and effect as if herein set forth at length.

29. By reason of the foregoing, plaintiff Elizabeth Selfridge Hill has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her health and of her ordinary social and family relationships, and [fol. 17] has otherwise been embarrassed, distressed and injured by said defendant's unlawful use of plaintiff's name and portrait.

30. By reason of all of the foregoing, plaintiff Elizabeth Selfridge Hill has been damaged and is entitled to recover from defendant Time, Inc. general damages in the amount of $100,000.00 and exemplary damages in the amount of $200,000.00.

Wherefore, plaintiffs demand judgment against the defendants:

1. That plaintiff James J. Hill recover from the defendants Hayes, Erskine and The Desperate Hours Company the sum of $50,000.00 as general damages, and $100,000.00 as exemplary damages; and from defendant Time, Inc. the sum of $50,000.00 as general damages, and $100,000.00 as exemplary damages.

2. That plaintiff Elizabeth Selfridge Hill recover from the defendants Hayes, Erskine and The Desperate Hours Company the sum of $100,000.00 as general damages, and $200,000.00 as exemplary damages; and from defendant

Time, Inc. the sum of $100,000.00 as general damages, and $200,000.00 as exemplary damages.

3. That plaintiffs be granted such other, different and further relief as may be just, together with the costs and disbursements of this action.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs, Office & P. O. Address: 20 Broad Street, New York 5, N. Y.

(Verified March 5, 1958 by James J. Hill.)

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PAGE

DAILY NEWS 7 STAR

BANK ROBBERS HOLD FAMILY IN WHITEMARSH PRISONERS;

ACTUAL EVENT, as reported in newspaper, took place in isolated house about 10 miles from Philadelphia. There three convicts from Lewisburg penitentiary held family of James Hill as prisoners while they hid from manhunt. All three convicts were later captured.

TRUE CRIME INSPIRES TENSE PLAY

The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours'

Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel, *The Desperate Hours*, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.

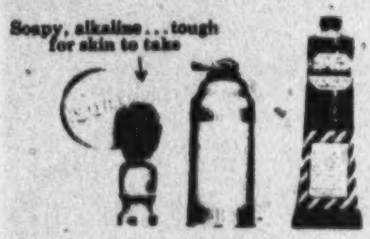
The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the site of the crime.

STAGE SETTING for play is cross section of the besieged house. Two convicts in living room harangue the daughter while the mother (Nancy Coleman) watches helplessly. In bedroom (*above, right*) the father tries to comfort his son, as a third convict listens in on telephone calls in the upstairs hallway.

Pretty smooth: your Barbasol shave

And here's why...

1. Barbasol is not alkaline, won't dry out your skin



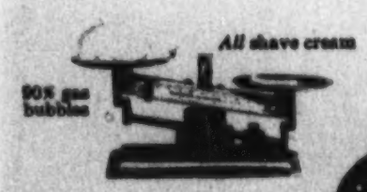
Its special non-soapy formula is easy on your skin—actually makes your *face feel better, look years younger.* That's because it won't soap off natural skin lubricants as "canned" and lather shaves do. Barbasol never leaves your face hot, parched, taut.

2. Barbasol has more soothing agents!

More skin soothers than any other shave cream

Barbasol's rich in emollients—special skin-soothing agents. It contains more of 'em than *any* other shave cream made. These ingredients help precondition your face for shaving, keep it feeling tiptop *after* every shave. And with Barbasol your razor gets closer. Shaves *last longer* than with any other way.

3. Barbasol is all shave cream!



Every bit of Barbasol is designed to condition your face, make shaving much easier. It has *real* body. Not like "canned" shaves—they're 90 per cent gas bubbles, and bubbles never licked a whisker yet. Barbasol softens your whiskers quick, holds 'em up so your razor can slice 'em clean.

Face it, man!

shave with Barbasol
...it's 3 ways better!

THREE CRISES AT A BACK DOOR

AT REAL HOUSE where family was trapped, actors do scenes from the play. Here daughter Cindy stalls off her beau from entering the beleaguered home.

BRAVE TRY to save family fails when father (Karl Malden) has to toss out gun because son is held as hostage.

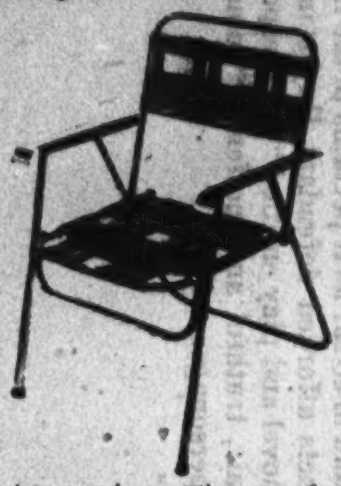
FIRST HOPE for rescue comes when trash collector chats with wife and senses something is wrong. He is killed, but his death puts police on trail.

CONTINUED ON PAGE 78

The Original

fredric arnold

Folding Aluminum Armchair



Use them now in recreation room for TV viewing, or in den. When spring comes, put them outside where they'll provide the perfect answer to that leisure living you're looking forward to. Comfortable, colorful . . . and best of all, they'll withstand weather's worst without deterioration. Frames of Alcoa® Aluminum are light but strong; seat and contour back are bright, multicolor plaid. The whole chair folds flat for storage.

Made by the world's largest producer of aluminum folding chairs, the Fredric Arnold Co., Brooklyn 1, N. Y. Sold at better furniture and department stores everywhere.

A user of

ALCOA ALUMINUM

ALUMINUM COMPANY OF AMERICA

It's SEA'LICIOUS.

A NEW TASTE THRILL!

So good for you!

NEW DOUBLE FEATURE GARTER BELT

to wear all through the month

It's a dainty, smoother-fitting garter belt, plus a wonderfully convenient sanitary belt with hidden sani-tabs for "those days"! Quick-drying nylon. $2.50

At better stores everywhere.

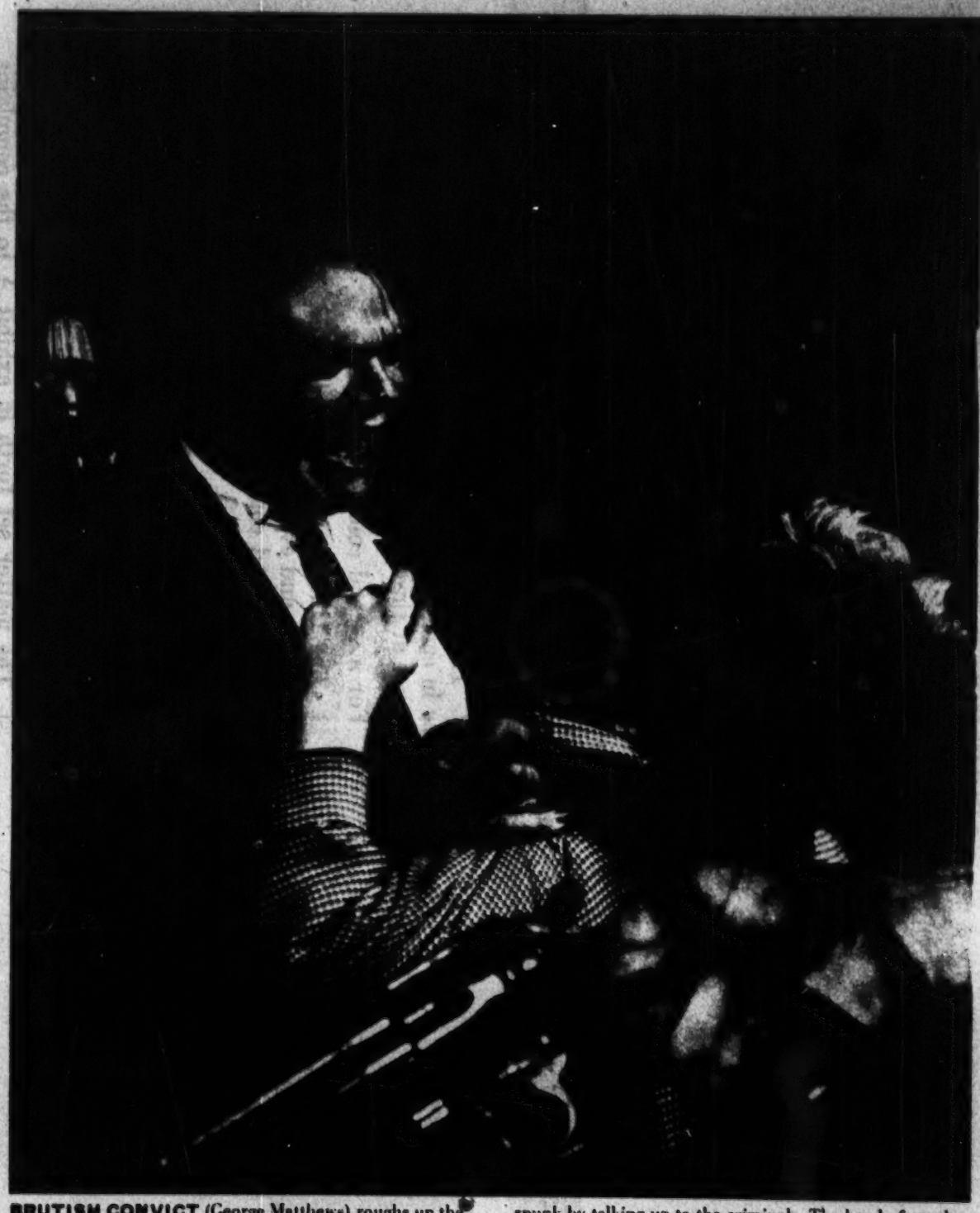
EXQUISITE FORM BRASSIERE, INC.

Exquisite Form BRASSIERES

A·1 SAUCE

Makes FISH delicious!

Ask for A.1. when dining out, too!



BRUTISH CONVICT (George Matthews) roughs up the young son, Ralphie (Malcolm Brodrick), who shows his spunk by talking up to the criminals. The hand of another convict holds a revolver (*foreground*) to terrorize family.

DARING DAUGHTER (Patricia Peardon) bites hand of youngest convict (George Grizzard), makes *him drop gun.*

FEVERISH FATHER cleverly foists off unloaded gun on the leader (Paul Newman), saves his son and family.

EXHIBIT A, ATTACHED TO THIRD AMENDED COMPLAINT

[fol. 20]

[fol. 21]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

ANSWER OF DEFENDANT TIME, INC.

Defendant, Time, Inc., for its answer to the second and fourth causes of action in the third amended complaint herein:

1. Denies each and every allegation contained in paragraphs 9, 18 through 24, 29 and 30 except that in the issue of Life Magazine dated February 28, 1955, which was distributed in the United States and foreign countries, there appeared an article, a copy of which is annexed to the complaint as exhibit A.

For a first complete defense:

2. The matter set forth in exhibit A to the complaint was in each and every respect a subject of legitimate news interest at the time of its publication.

For a second complete defense:

3. The matter set forth in exhibit A to the complaint was in each and every respect a subject of general interest and of value and concern to the public at the time of its publication.

[fol. 22] For a third complete defense:

4. The matter set forth in exhibit A to the complaint, in so far as it pertains to plaintiffs or either of them, reports facts theretofore of public knowledge and record.

For a fourth complete defense:

5. The matter set forth in exhibit A to the complaint, in so far as it pertains to the imprisonment of plaintiffs, or either of them, reports facts theretofore of public record and knowledge only, and in so far as it pertains to the inspiration which such facts afforded defendant Hayes in the constructions of his novel and play entitled "The Desperate Hours" represents fair, truthful and inoffensive comment in respect of public personages only.

For a fifth complete defense:

6. Plaintiffs are residents of the State of Connecticut and were residents of the State of Connecticut at the time the matter set forth in exhibit A to the complaint was published and distributed and any impact upon plaintiffs as a result of that matter in violation of any asserted right of privacy took place solely in the State of Connecticut.

7. Any right or cause of action asserted by plaintiffs against this defendant for violation of any asserted right of privacy is solely governed by the law of the State of Connecticut.

8. The law of the State of Connecticut does not recognize any alleged cause of action for violation of right of privacy.

[fol. 23] For a sixth partial defense:

9. The matter set forth in exhibit A to the complaint was published in good faith without any malice whatsoever toward plaintiffs, or either of them, or any other person.

Wherefore, defendant, Time, Inc., demands judgment dismissing the complaint herein against it, together with costs and disbursements in this action.

May 16, 1958

Cravath, Swaine & Moore, Attorneys for defendant Time, Inc., 15 Broad Street, New York 5, N. Y.

[fol. 24]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

SPECIAL AND TRIAL TERM, PART X

New York, N. Y., April 5, 1962

Before:

Honorable Arthur G. Klein, Justice and a jury.

Appearances:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for Plaintiffs, By: Leonard Garment and Donald J. Zoeller, Esqs., of Counsel.

Gilbert & Gilbert, Esqs., and A. L. Berman, Esq., Attorneys for Defendants Hayes, Erkine and The Desperate Hours Co., By: Jerome E. Malino, Esq., and Theodore R. Jackson of Counsel.

Cravath, Swaine & Moore, Esqs., Attorneys for Defendant Time, Inc., By: Harold R. Medina, Jr., Esq., and Oliver Biddle, Esq., of Counsel.

Albert Stern, C. S. R., Official Reporter.

CASE AND EXCEPTIONS

* * * * * * *

[fol. 25] JAMES J. HILL, one of the plaintiffs, residing at 409 Sound Beach Avenue, Old Greenwich, Connecticut, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Hill, would you just keep your voice up, please. Are you one of the plaintiffs in this action?

A. Yes.

Q. What is your relationship to the other plaintiff, Elizabeth Hill?

A. Husband.

Q. What is your business or profession, Mr. Hill?

A. I am vice president and director of sales for a manufacturing concern, Alba—division of Alba Waldensian, Inc., main mills in Valdese, North Carolina. My office is in the Empire State Building.

Q. Will you tell us what your work involves?

A. I direct the sales for the entire company. We distribute nylon hosiery for ladies, to various leading department

stores, specialty stores and national chains throughout the country.

Q. Where do you make your home, Mr. Hill?

A. I live at 409 Sound Beach Avenue, Old Greenwich, Connecticut.

Q. How long have you been in the merchandising business?

A. Since 1934.

Q. Where did you go to school?

A. I attended the University of Kansas, at Lawrence, Kansas, Bachelor of Arts degree, in 1928. Harvard Law School for two years.

Q. Did you withdraw from law school?

A. I did.

Q. What line of work did you go into at that point?

A. At that point I was working for the Harvard Intramural Department coaching several exercise classes. I was also working in a Shell Oil filling station in Cambridge, [fol. 26] Massachusetts, and I was playing basketball for five or six different semi-professional teams through New England.

Q. And is that what you continued to do for a period of time?

A. I did.

Q. When did you get into merchandising?

A. In 1933, I entered the Jordan Marsh Company on their executive training course.

Q. And have you been in that business ever since then?

A. I have.

* * * * * * *

Q. Now, Mr. Hill, in September 1952 where were you and your family living?

A. We were living in a house outside of Philadelphia, in the Whitemarsh Township, Pennsylvania.

Q. By whom were you employed at that time?

A. By Dexdale Hosiery Mills, at Landsdale, Pennsylvania.

Q. And what was your job with Dexdale?

A. I was director of sales.

Q. How long had you been with Dexdale?

A. A total of approximately nine years.

Q. Would you tell us something about the house that you lived in at that time?

A. It was a large, old Dutch farmhouse that had been converted into a residence, with a a stone barn in back which was almost as large as the house. It was situated in the middle of an eighty-acre tract. It had about 20 or 22 rooms in the house.

Q. Did you own that house or did you rent it?

A. I rented it.

• • • • • • •

[fol. 27] Q. I don't believe I asked you what the size of your family was in 1952 and how old the children were.

A. Susan, our oldest daughter, was seventeen. Betty was fifteen. Jim, Jr. was eleven, and Clyde and Robert, Butch and Bobby, the twins, were four.

Q. Mr. Hill, coming to September 11, 1952, did that day start like all other days in the life of your family?

A. Yes.

Q. Would you tell the jury as best you can now what happened that day?

A. Mrs. Hill and I got up at the usual time, which was somewhere around six o'clock, and then the children started to get up, and we all had breakfast together. Around eight o'clock, I left in one of our cars with Susan and Betsy, to take them to Norristown, Pennsylvania, where they attended the senior high school.

From there I went to Philadelphia that day to work with some of the leading department stores, John Wanamaker's, Strawbridge, and Gimbels.

Around five o'clock, I telephoned Mrs. Hill that I was finished and would be leaving for home, and I arrived around six o'clock. I drove my car into the parking area,

back by the barn, and walked up to the house, walked in the center back door.

I was met at the doorway by Mrs. Hill, who was very nervous. She said in effect, "Please don't do anything that you will be sorry for. Something terrible has happened to our family. Just be careful," or something like that.

Naturally, I was very disturbed about it. I didn't know what in the world had happened. So I put my arm around her and tried to console her, and we walked along the hallway towards the main dining room, which was connected by a large breakfast room.

[fol. 28] As I came around the corner of the partition, I came face to face with two young men with guns in their hands pointed at Mrs. Hill and myself.

Q. Did you know who they were at that time?

A. I did not.

Q. Did you later learn the identity of those two men?

A. I did. I later learned it from Mrs. Hill, who had seen a newspaper which our daughter Betsy had brought home, and I also had a chance to see the newspaper which I had bought in Philadelphia and had just folded up and carried into the house without reading.

Q. Who were those two men?

A. The smaller one was Joe Nolen, and the taller, thin one was Elmer Schuer.

Q. All right. You walked in and there were Joe Nolen and Elmer Schuer, and they had these guns.

A. Lined up on the other side of the table, with our five children, and on the table there were a number of assorted shotguns and rifles and a supply of ammunition.

Joe Nolen spoke up and said, "Mr. Hill, we have taken over your house and we intend to keep it as long as we need it."

I don't know whether these are the exact words, but, in fact—

Q. I understand. Just give the substance, Mr. Hill.

A. He said, "We need shelter. We need clothing. We

need money. And we are going to stay as long as we need to."

He said, "If you folks do what you are told, nobody will be hurt."

Q. What did you tell him, Mr. Hill?

A. I told him that their problems were their own problems; that we were interested in just our family, and as long as nothing happened to our family and as long as their requests were reasonable, then we would do what they told us to do.

[fol. 29] Q. All right. What happened after that?

A. After that, they searched me, and then Joe Nolen said that he would suggest that we get something to eat. And he apologized for the fact that we wouldn't have the usual meal, since that was Mrs. Hill's shopping day, and he said that she had been prevented from going out to do the shopping. He told us to go ahead and have something to eat and then they would get something for themselves after that.

Q. Did you go into the kitchen?

A. Yes.

Q. And was Mrs. Hill with you?

A. Yes.

Q. Did you have something to eat?

A. We had something to eat, some sandwiches or soup or something.

Q. Did you discuss with Mrs. Hill the events that had transpired that day before you came home?

A. Yes.

Q. What did she tell you?

A. She told me that only a few minutes after I had left, around eight o'clock, that a man had appeared at the back door and had asked if the mister was in and she replied that he wasn't, and the man immediately started coming in through the screen door. She tried to stop him, but with no success. He was followed by two other men carrying guns. She told me that the first man was Joe Nolen, and

the two men that came in afterwards were Elmer Schuer and Joe Nolen's younger brother, Ballard Nolen.

• • • • • • •

Q. Mr. Hill, what was Mrs. Hill's attitude or appearance during this period, that is, from the time you came home and through the dinner meal that you had?

A. She was very distressed. Obviously she was very frightened, the same as I was.

Q. Was she crying?

A. No, she was not.

[fol. 30] Q. Were any of the children crying?

A. None of the children cried at any time. There was no hysteria whatsoever.

Q. What was the attitude of your children about the presence of the men in the house at this time, that is, the early part of the evening?

A. Butch and Bobby, of course, were only four at the time. They obviously didn't realize what was going on. It was an unusual situation to them. Jimmy was very quiet. He was there during the entire nineteen hours, also, with the twins and Mrs. Hill. He seemed to sense that this was very serious, but he didn't give any outward show of it.

Betsy, who came home earlier in the afternoon, was openly indignant about the convicts coming in the house and actually made one remark in front of me and in the hearing of one of the convicts along the line that they were just a bunch of punks.

Susan was quite disturbed and she had very little to say.

Q. After you finished dinner, Mr. Hill, what then happened?

A. Joe Nolen had come out to the kitchen door and he stood there for a minute, and then he said—he pardoned himself and asked if he might come in.

Naturally, I said, "Certainly," and he came in and sat down and talked a few minutes with Mrs. Hill and me. Then he said, "We will have to put you folks all in one place tonight so that we can watch you." And he said,

"Where would be the best place for that so that we can watch you," or words to that effect.

I suggested that the third floor apartment, which the girls had fixed up—actually, I believe they were former maid's quarters. It had two rooms separated by a stairway coming up from the second floor, and at the base of that [fol. 31] stairway on the floor there was a door which latched on the second floor side.

Q. So that this was sort of a little, separate apartment in the house?

A. Yes, with a bath and so on.

Q. What sleeping arrangements were made?

A. Well, there was a single bed in each room. So Mrs. Hill was to take one of the single beds, and Susan was to take one of the others. The convicts offered to help us take extra mattresses up there, and they even offered to take down the twins' cribs and put those back up.

I told them that they obviously hadn't had much experience with putting up cribs and taking them down because that's a pretty serious job.

So we said we would just take the mattresses upstairs. We placed the twins' mattresses on the floor beside Mrs. Hill's bed. We put another mattress in the other room for Betsy to sleep in the same room with Susan. Then another mattress on the hallway that was alongside the stair well for Jim. And that was the basis of the sleeping arrangement.

Q. What time did you and your family go upstairs to this part of the house?

A. Around nine, nine-thirty.

Q. Did you go to sleep immediately?

A. No. We attempted to play a game of hearts, the entire family, but we gave that up after a while.

Q. Did the convicts or any of them come up into this part of the house at any time after you and your family went up there for the evening?

A. No.

Q. Was there a time when either you or Mrs. Hill were asked to come out of the apartment to do something?

A. Yes.

Q. When was that?

A. The telephone rang, and as Mrs. Hill had told me that she had done during the day, they called her to answer the telephone. While she would take the call and talk, [fol. 32] one of the convicts would get on the connecting phone and listen in and then eventually would signal when she was to end the conversation. They called her downstairs to answer the telephone call around nine-thirty or so, and then she returned upstairs.

Q. Did they do anything about the telephone at that point?

A. Mrs. Hill said they ripping the wires out as she came back upstairs.

Q. Did the convicts call upon you or come up into your family's quarters at any other point that night?

A. Not at all.

* * * * * * *

Q. Mr. Hill, when did the family finally go to sleep, about what time?

A. I would say the twins dozed off not too long after we finished playing cards, probably around ten o'clock or so.

Jimmy, who was—I was sitting in a chair at the head of the stair well, and I could see Jimmy more clearly than the rest of the family—he dozed off somewhere around ten-thirty or so, and I could hear Mrs. Hill moving around in the bed. It was shadowy from where I was sitting, but I think that she wasn't sleeping.

Susan, in the other bedroom, was quite restless, and I don't think that she slept too much during the night.

Q. Where did you spend the night, Mr. Hill?

A. I spent most of the night sitting in a chair at the head of the stairway. At different times I got up and tiptoed into the different rooms to see if everybody was all right; most of the time, in the chair.

Q. Did there come a time when the convicts finally left? Well, let me put the question this way: Do you know when the convicts left?

A. I know when two cars left.

[fol. 33] Q. Would you tell us the circumstances of the departure of the convicts, as best as you knew it?

A. Around midnight, it seemed, as best I could tell, there was a great deal of moving around downstairs and that lasted for ten or fifteen minutes. Then there was quiet again for almost 45 or 50 minutes. Then they started moving around again and I heard the motor of one of our automobiles start, and from the sound it seemed to me that they were moving it forward and moving it backwards. We couldn't see the barn area from where we were up on the third floor.

Then there was quiet again and this same interval. This happened successively almost each hour, until around 3 o'clock or 3:15 I heard a car start up. I knew it wasn't one of our new Pontiacs, so I judged that it must be the old green Mercury that I had seen parked in the lot when I had come home earlier in the evening.

Q. Well, in any event, when did you finally come down out of this part of the house?

A. Well, the second car started up—

Q. No, Mr. Hill. When did you come down out of this section of the house?

A. We came down shortly after 6 o'clock.

Q. Now let me ask you this. Before you went up to the sleeping quarters, had the convicts or any of them given you and Mrs. Hill any instructions in connection with your going to bed and when you got up, et cetera?

A. Yes.

Q. What were those instructions?

A. Joe Nolen had asked me what time we usually get up and I told him around 6 o'clock. He said that would be fine. He said, "Get up as usual tomorrow at 6 o'clock. Don't come downstairs before that, and don't notify the police until 8 o'clock. If there is any rumbling, you will hear from us."

Q. Did you agree?

A. We did.

[fol. 34] Q. You came down, you say, at 6 o'clock in the morning?

A. Yes.

Q. Were the convicts gone?

A. Yes, they were.

Q. What did you and the other members of your family do at that point?

A. We looked around the house and we looked around the garage area. We found that one of our cars had been taken. We found their car was gone. We found that some clothing and some luggage and things of that type had been taken. Then we dressed, we had breakfast, and at 8 o'clock, around 8 o'clock, I walked over toward one of the neighbors to make a telephone call to the police.

Q. Now, Mr. Hill, in the period of time that you were in the house, from 6 o'clock on, was there any profanity, any obscene language on the part of any of the convicts in the presence of any member of your family, so far as you know?

A. None whatsoever.

Q. Was there any violence in the way of any type of assault or touching by any of the convicts of any member of your family?

A. Not one bit of it.

Q. Was there any drinking of hard liquor in the house?

A. There was hard liquor—

Mr. Medina: I don't see how this witness can tell that.

The Court: If he can say, I will permit it. If you saw any of them drinking, you can so state.

Mr. Medina: If he limits the question to in his presence, I have no objection.

The Court: Yes, in his presence.

By Mr. Garment:

Q. So far as you know, Mr. Hill, was there any hard liquor drunk by any of the convicts?

[fol. 35] Mr. Medina: I still object to that question.

The Court: Let us put it this way.

Did you have any liquor in the house?

The Witness: Yes, sir.

The Court: Did you notice whether any of it was gone after you came downstairs?

The Witness: It didn't seem that any of it was gone.

The Court: Then the answer to the question did they drink in your presence would be "No," I assume.

The Witness: That is correct.

Q. Was any member of the family out of the house during the period that you were there?

A. No one left the house at all.

Q. Was there any attempt on the part of any member of the family to escape?

A. There was no attempt by anyone to escape.

Q. Was there any gun shot by anyone in or around your house during the period of time that you were there?

A. There was no gun shot in the house or around the house while I was there.

Q. Was anybody other than your family or members of your family assaulted or injured in or around your house during the period of time that you were there?

A. No one.

Q. What time did the police arrive?

A. Around 9, 9:30.

Q. Were these representatives of the local or State police, or both?

A. I telephoned the local police and the local police arrived first. Then I believe the State police came.

Q. Was the Federal Bureau of Investigation there?

A. Yes, they arrived later from Philadelphia.

Q. Were you questioned by the police?

A. Yes.

[fol. 36] Q. Were the other members of the family questioned by the police?

A. Yes.

Q. Would you tell us very briefly, Mr. Hill, and generally what the subject matter of the questioning was, and in gen-

eral terms what responses were given by you or by other members of your family in your presence?

A. We were questioned individually and collectively and then individually and then collectively—about every combination that you could think of. They wanted us, each of us, to tell them everything we possibly could about the description of the convicts, about the events of the day and the night, about any possible conversations of the convicts that we might have heard, about any indication that they might have given to us as to their plans.

They repeatedly went over the question as to whether there had been violence to any member of our family. They questioned our daughters and Mrs. Hill about whether they had been violated or not. They even questioned the twins about what they had seen, what they knew, what events they could tell about.

They wanted to know about the property that had been taken, about the clothing, about the luggage, anything else that might be missing.

They wanted a description of the car, the motor numbers, and so on, a description of the green Mercury that they apparently had arrived in.

Q. And did you and the members of your family answer these questions to the best of your ability?

A. Yes, we did.

This questioning continued to somewhere around 2 o'clock in the afternoon.

Q. During this period of time were there any members of the press in the house?

A. Yes. We were all in two rooms, which actually opened [fol. 37] out into one big room, and before we finished the entire area was crowded with people milling around, and in the midst of it someone shot off a flash camera.

I went to the State police officer in charge and the Federal Bureau of Investigation man and told them that the press had come into the house, that they had no right to be there in that way, that one of them had even torn off a screen from the window and had crawled in in that way.

Q. In any event, Mr. Hill, were the gentlemen of the press and any photographers asked to leave the house until the police questioning was terminated?

. . . . . .

A. As far as I know, all of the photographers and members of the press were asked to leave until the questioning had been ended.

. . . . . .

By Mr. Garment:

Q. In any event, Mr. Hill, did there come a time when you gave a statement to the press?

A. Yes.

Q. Before you gave that statement, did you go over it with one of the representatives of the police or the F. B. I.?

A. I went over it with the chief officer of the State police and the chief officer of the F. B. I.

Q. Where did you give the statement?

A. I stayed on the front steps of the front porch of the house.

Q. Were there members of the press assembled on the premises of your house?

A. Yes, on the lawn.

Q. Can you approximate how many persons were present, that is, were there many or few?

A. A great many.

[fol. 38] Q. Do you know whether there were representatives of various news services as well as representatives of specific newspapers?

A. I believe there were representatives of national news services and also of local papers, Philadelphia papers.

Q. Was there television equipment present on your lawn?

A. There was a lot of equipment there. I assumed it was television and radio equipment.

Q. And did you make your statement over a microphone or into a microphone?

A. Yes, I did.

Q. In general terms—I don't think there is any need to repeat what you went through before—did you describe the events that had transpired in your house to you and the members of your family, in your statement to the press?

A. I did, as best I could, the events of the day and night.

Q. Was Mrs. Hill with you at the time you gave this statement?

A. She was not.

Q. Were certain other members of your family present with you when you gave the statement?

A. Yes.

Q. Who was present with you?

A. Betsy, our youngest daughter, and the three boys—Jim, Bobby and Butch.

Q. Where was Mrs. Hill?

A. Mrs. Hill was in bed at that time.

Q. Well, I wonder if you could tell us, was she ill or what?

A. She was just worn out.

Q. And where was Susan?

A. Susan refused to come out of the house.

Q. After you finished making your statement, Mr. Hill, were questions asked?

A. Yes.

Q. Could you tell us again briefly and in general terms the nature of those questions and your responses to the questions?

A. After we told about the events, then they wanted to know specific things, about had there been any violence, [fol. 39] had anybody been struck, how did they act, was there any profanity, did they tear up the house, the furniture, and so on. Just general questions along that line.

Q. And what did you tell them, Mr. Hill?

A. I told them that there had been absolutely no violence, there had been no profanity whatsoever. I told them the events that had happened.

Q. In your statement to the press and in your responses to the questions asked by the press, Mr. Hill, did you at-

tempt to recapitulate the events of the entire day, that is, repeating also material that Mrs. Hill had told you?

A. Yes, I did.

Q. Do you know whether Mrs. Hill was questioned or gave any statement to any members of the press during the day?

A. Mrs. Hill was in the room when all of the people were milling around earlier. I wasn't with her all the time that she talked with people. We were all talking to many officers. She could have talked with a reporter at that time.

Q. Now, Mr. Hill, was an account of your interview and were reports of the incident published in the Philadelphia area?

A. Yes.

Q. To your knowledge, were these accounts published all over the country?

A. I believe the national news services published them widely.

Q. Was it the subject of reporting in magazines also?

A. Yes.

Q. Would you say, Mr. Hill, in general terms, that the reporting at that time in these various publications fairly and with reasonable accuracy reproduced what you had told the press directly in response to questions?

A. It did.

Q. I show you a clipping of an article with photographs from the Times-Herald of Norristown, Pennsylvania, dated [fol. 40] September 12, 1952, and I ask you whether that is a representative news account of your incident.

A. Yes, it is.

* * * * * * *

(Photostatic copy referred to received in evidence as Plaintiffs' Exhibit 1.)

* * * * * * *

By Mr. Garment:

Q. Mr. Hill, in addition to this article in the Norristown Times-Herald there were, of course, a good many other such articles published in and around Philadelphia on September 12th and September 13th of 1952?

A. Yes.

Q. So far as magazine coverage is concerned, I show you this clipping from Time Magazine for September 22, 1952 and I ask you whether you were acquainted with that report at or about the time of its publication (handing paper to witness).

A. Yes, sir.

Q. And does that report fairly reflect the facts of what transpired in your house as you reported it to the press on September 12, 1952?

A. Yes.

. . . . . .

(The clipping from Time Magazine of September 22, 1952, was received in evidence as Plaintiffs' Exhibit 2.)

Mr. Garment: With your Honor's permission, I would like to read this article to the jury. It is quite short.

The article is entitled, "House Party."

Now I will read the text.

"When Mrs. Elizabeth Hill, 43, answered the knock at the back door one morning last week and saw the young [fol. 41] man with a two days' growth of beard, she was terrified. Her husband, James Hill, a hosiery company executive, had left for work; her daughters Betsy and Susan were in school. In the big ivy-covered house in a Philadelphia suburb, there were only Mrs. Hill, her eleven-year-old son Jimmy and four-year-old twins, Clyde and Robert. On the 8 a.m. newscast she had heard about the three 'desperate and vicious' bank robbers who had escaped from the federal penitentiary at Lewisburg.

"'You probably know who we are,' said 26-year-old Joseph Nolen of Woodbine, Kentucky. 'We're not going

to hurt you—we just want your house for a day. If you do what we tell you, nobody will be hurt.'

"As Nolen pushed open the back door, his brother Ballard, 22, and Elmer Schuer, 21, of Chicago appeared from behind a trellis, pointing shotguns at Mrs. Hill. When the men had searched the house from cellar to attic, Mrs. Hill asked them if they would like some breakfast. 'Yes, we'd appreciate it,' replied Joseph politely. She fixed them some scrambled eggs, bacon and coffee."

Then there is another little heading: "Tonic and Lotion.

"Breakfast done, the three fugitives took baths and shaved, helping themselves to Hill's hair tonic and shaving lotion. Then they helped themselves to Hill's suits. When Joseph discovered that six-footer Hill's suits didn't fit, he sat down at an old treadle sewing machine and carefully altered the trousers and sleeves. The thread broke repeatedly, and Mrs. Hill kept rethreading the needle.

[fol. 42] "While one of the men stood by with a shotgun, Mrs. Hill called her cleaning woman to tell her that the car had broken down and she couldn't pick her up. A Fuller brush salesman telephoned, and she asked him to deliver the brushes she had ordered some other day. At 4 p.m., when Susan and Betsy came home from school and found Ballard guarding their mother (the other two had gone out somewhere on an errand), they thought it was some kind of joke.

"Two hours later Hill came home from work, and Ballard ushered the whole family into the kitchen for dinner. They were all seated at a meal of canned soup, spaghetti, chile con carne, milk and coffee when Joseph and Schuer returned. 'May I come in?' asked Joseph politely, standing in the kitchen doorway. Later the men played poker. They asked Betsy to join them, but she said that she played only canasta. The robbers told her they did know that game. Most of the time they kept the radio tuned to dance music, and they used no profanity."

Another heading: "Bedtime.

"'I guess you folks would like to go to bed,' suggested Joseph at last. 'If you do, just go ahead. I wish you would all go up to the third floor if you do go to bed.' Hill observed that there was only one bed up there. So Joseph and the other two men carried up several loads of cribs and mattresses. Hill sat up all night in a chair while his family tried to sleep. At 3:30 a.m., nineteen hours after the fugitives entered the house, he heard his car start up. The three men then drove away into the early morning [fol. 43] blackness, where the FBI and most of the police in Pennsylvania hunted for them.

"Following out orders from the trio, who had cut the telephone wires, Hill waited until 8 a.m. before going to a neighbor's house to call the police to tell them about his interesting house guests."

* * * * * * *

Q. At this point, after September 12th, the three convicts were still at large, were they not?

A. Yes.

Q. Was your family under police protection?

A. I had demanded police protection and had gotten it.

Q. Did that continue until such time as the convicts were apprehended?

A. Yes.

Q. When were they apprehended?

A. On Saturday, which was about ten days after the incident. I believe it was September 20, 1952.

* * * * * * *

Q. Let me put this question to you, Mr. Hill. How did you learn of the apprehension of the convicts?

A. Mrs. Hill and I were listening to the radio Saturday morning at around 9:30 or so on September 20, 1952. We heard the report over the radio that they had been captured in New York.

Q. Did you thereafter read news accounts of their capture?

A. We did.

Q. Were these news accounts published in the Philadelphia area?

A. They were.

Q. Were you called by the press at that time?

A. Yes.

Q. Mr. Hill, I show you an article in the Philadelphia Daily News for September 22, 1952 and I ask you whether [fol. 44] you and Mrs. Hill saw that article at or about the time of its publication.

A. Yes, we did.

* * * * * * *

AFTERNOON SESSION

JAMES J. HILL, resumed the stand and still being under oath further testified as follows:

Direct examination.

By Mr. Garment (Continued):

* * * * * * *

(The articles from the issue of the Philadelphia News referred to were received in evidence as Plaintiffs' Exhibit 3.)

Q. Mr. Hill, I show you this clipping from the Conshohocken Recorder for September 22, 1952. First, I want to ask you this: Is this Conshohocken Recorder a local newspaper in or around the Whitemarsh area?

A. Yes.

Q. Will you look at this article and tell me whether or not you and Mrs. Hill saw that article at or about the date of this publication?

A. Yes, we did.

* * * * * * *

(The articles from the Conshohocken Recorder received in evidence as Plaintiffs' Exhibits 4-A and 4-B.)

* * * * * * *

Q. Just to have the record clear on this, Mr. Hill, the apprehension and killing of the convicts and the killing of the detective took place in New York City some ten days [fol. 45] after your incident in your home in Pennsylvania; is that correct?

A. Yes.

Mr. Garment: Now, with your Honor's permission, I would like to read first two or three paragraphs from Exhibit 4-A. The heading is: "Convicts Killed, Police Guard Ceases."

The subheading: "James Hill Family Moving Freely Again.

"For the first time in 10 days, members of the family of James J. Hill, Joshua Rd., near Flourtown Rd., Whitemarsh Twp., felt free to go home and come as they please.

"The fear that has gripped their lives since three escaped convicts held them captive for 19 hours was lifted and the police guard provided by Whitemarsh Twp. and the State Police 24 hours daily since September 12th was gone.

"Two of the convicts were dead in New York and the third was in prison. A detective also is dead and a second detective wounded critically.

"The scene of murder was one that might have happened in the secluded Hill residence, at one time occupied by G. Harrison Frazier, had the family failed to cooperate with the criminals or had police attempted to capture the trio while the desperadoes were holding Mr. and Mrs. Hill and their five children prisoners in their own home from 8:00 A. M. September 11 until 3:30 the next morning.

"Hill said this morning he did not wish to comment on the killing of the two convicts and the surrender of one. 'I have nothing more to say,' was his only observation.

[fol. 46] "While a great manhunt developed after the trio fled from the Hill home, all seven members of the Whitemarsh Twp. Police Department had a turn guarding the family. They were assisted by the State Police.

"Mrs. and Mrs. Hill felt that there was a possibility that the escapees might return and harm them, and requested police protection as the manhunt spread into adjoining states."

* * * * * * *

Q. Now, did there come a time, Mr. Hill, when you and your family moved from Whitemarsh Township?

A. Yes.

Q. When was that?

A. November 24, 1952.

Q. And where did you move to?

A. To our present home, in Old Greenwich, Connecticut.

Q. I want to ask you this, Mr. Hill: Had that move been planned prior to the incident of September 11?

A. The move had been planned for a later date.

Q. What effect, if any, did the incident have upon the move?

Mr. Medina: I object to the form of the question.

Q. Let me put it to you this way, Mr. Hill: Were your plans in relation to the timing of your move affected in any way by the incident?

Mr. Medina: Same objection.

The Court: That's the same question. I will overrule the objection.

A. It accelerated the move.

[fol. 47] Q. What was the occasion for the move that had been previously planned?

A. Our sales office for Dexdale Hosiery Mills had always been located at the plant, at Lansdale, Pennsylvania. The center of selling activity in the hosiery business has always been New York City, and I prevailed upon the president of Dexdale Hosiery Mills to allow us to take the selling office from the mill over to New York City and combine it with our New York office.

Q. Now, at the time of your move, Mr. Hill, was there any further newspaper comment about you or your family?

A. Yes.

Q. Do you know whether there had been some telephone calls or other questions from the press to any member of your family?

A. I believe they telephoned Mrs. Hill.

Q. Mr. Hill, I show you a clipping from the Sunday Bulletin of Philadelphia for November 23, 1952 and I ask you whether you saw that article at or about the time of this publication?

A. Yes, I did.

* * * * * * *

(The two articles referred to from the Sunday Bulletin of Philadelphia were received in evidence as Plaintiffs' Exhibits 5-A and 5-B.)

Mr. Garment: With your Honor's permission, I would like to read part of this article to the jury.

The article is entitled: "Captive Family Moving to Connecticut. Hills, Held by Convicts, Leaving Whitemarsh.

"The James J. Hills are leaving their rambling home in Whitemarsh Twp. where they were held captive for 19 hours last September by the Nolen Brothers and Elmer [fol. 48] Schuer, three escaped bank-robbers. Tomorrow is moving day for the hosiery firm executive, his wife Elizabeth and their five children. They are moving to their new home in Old Greenwich, Connecticut, two blocks from Long Island Sound, where the entire family will be close to their favorite recreation, salt water bathing.

"The terrifying experience of last September 11-12 is not forgotten but seldom discussed and never with the children. It has had nothing to do with their moving. Mr. Hill is general sales manager of the Dexdale Hosiery Company, Lansdale, which is transferring its main sales office to New York City. He will make his headquarters there."

There follows a recapitulation of the previous incident and the article concludes:

"Mrs. Hill said yesterday the family had suffered no ill effects from the experience. Moving is nothing new to the family. They have moved almost yearly in the last ten years as Hill was transferred from place to place by Dexdale. 'Moving a family our size from a 20-room house is some job,' Mrs. Hill said, as she supervised the packaging of the chinaware.

'It seems that what we pack the twins unpack.'"

By Mr. Garment:

Q. Now Mr. Hill, apart from these interviews that we have talked about and that I have read to the jury and others that were published in other newspapers, were there other requests from other persons or organizations for interviews beyond those that we have already talked about?

A. Yes, there were.

[fol. 49] Mr. Medina: I object to the form of the question. It calls for hearsay.

The Court: I will permit the answer.

The objection is overruled.

* * * * * * *

Q. Would you tell us who made the requests without going into details of what the requests were?

A. A person who purported to be an agent of the Ed Sullivan Toast of the Town Show. I refused his request. A reporter from the Lewisburg, Pennsylvania newspaper requested an interview. I refused that. There was a call from a leading New York columnist, I believe Inez Robb—I think that's who it was—requesting—

Mr. Medina: Here is the vice. He gives hearsay in the answer. I ask that it be stricken.

Mr. Garment: It is simply a question as to his having received the requests.

The Court: Perhaps we can bring this to a head by indicating—you received numerous requests, all of which you rejected, is that correct?

The Witness: That's correct.

The Court: I will permit you to state from whom those requests came—with the understanding that that's all you can go into.

Overruled.

Now, you have mentioned Inez Robb and the other two. Were there any others?

The Witness: I can't recall the exact names, but from the Philadelphia television and radio stations, from some of the New York television and radio stations.

[fol. 50] By Mr. Garment:

Q. Did these requests involve appearances by you and members of your family?

A. Some of them did.

* * * * * * *

The Court: . . . You didn't agree to any of these, did you, sir?

The Witness: No, sir. I refused all of them.

* * * * * * *

Q. When you reached Old Greenwich, Connecticut, Mr. Hill, and settled down there, was there continuing comment about the Whitemarsh incident of September 11-12, 1952?

A. Somewhat, for a short period, and then it died down.

* * * * * * *

Q. Was there any comment, was there any publicity in the Old Greenwich Newspaper or any paper in Greenwich?

A. No.

Q. Was there a call from a New York newspaper to either you or your wife, to your knowledge?

A. There was a call to Mrs. Hill.

Q. Was any interview given?

The Court: He has already said that he didn't give any more interviews after his first one.

A. I knew that as small as it might be, that it was going to revive unpleasant questions, about something that we had done our very best to put behind us, something that we wanted to forget. Even though the questioning might not be widespread, limited, for the most part, to people that knew about our incident and knew that we had lived in Philadelphia, still there could be a certain number of them that would be very embarrassing to us. It would be very hard for us to go through the whole thing and revive it to a certain extent again.

Q. Mr. Hill, was there a revival of some comment or questioning about Whitemarsh after The Desperate Hours was published?

A. Yes, there was, as I explained before, and it seemed to last for several months after the book had come out and then it sort of died down.

• • • • • • •

[fol. 56] Q. What did you tell these people, Mr. Hill?

A. I told them that The Desperate Hours was not our story; that we had had nothing to do with it in any way; that there had been no violence in our incident; there had been no threat of molesting my wife or daughters; that there had been no profanity whatsoever, no one had been harmed. And I insisted on that. I told them we had no part in the writing of The Desperate Hours; that I didn't know Joseph Hayes; I had never heard from him. I don't know him today.

• • • • • • •

Q. In any event, Mr. Hill, how long after the publication of The Desperate Hours novel in March of 1964 did this questioning and comment continue?

A. As I testified before, several months or so, and then it died down.

Q. Right in the middle of all this, did you receive a request in writing for another interview with respect to your actual incident in Whitemarsh during September of 1952?

A. I did.

Q. Did you show that request to Mrs. Hill?

A. I did, and I discussed it with her.

Q. Did you make a response to that request?

A. I did.

Q. Did you make a copy of the response?

A. I did.

Q. Who was that request from?

A. From a Mr. Rasky, who resided at that time in Long Island, some place in Long Island.

Q. Did you know Mr. Rasky prior to receiving this request from him?

A. No.

• • • • • • •

(Paper containing letter from Mr. Rasky to Mr. Hill, dated April 28, 1954 and a copy of Mr. Hill's response was received in evidence as Plaintiffs' Exhibit 8.)

[fol. 57] Mr. Garment: With your Honor's permission, I will read this to the jury.

The letter is on the printed letterhead with a phone number, HIckory 6-2844 and the name "Frank Rasky" and the address 37-09 75th Street, Jackson Heights 72, Long Island.

It's addressed to James J. Hill, Lansdale, Pennsylvania.

"Dear Mr. Hill:

"Allow me to introduce myself. I am a professional magazine writer in New York.

"The editor of Male Magazine has asked me to inquire whether you would be prepared to submit to an interview in connection with your experience in September 1952. That, of course, is when your family were held by those escaped convicts for 19 hours.

"Under such an arrangement you would receive half of any payment I would get for the mazagine.

"I believe such an article would help the public to understand how to contend with criminals.

"I would be much obliged if you would write telling me whether or not you would be interested in such an article being written about your experience. If you are interested I would like to arrange a satisfactory time when I can come to your place for an interview. Cordially (signed) Frank Rasky."

By Mr. Garment:

Q. Now, Mr. Hill, the answer to that appears on the back, is that correct?

A. That's correct.

Q. And that is in your handwriting?

A. Yes, sir.

[fol. 58] Q. Did you make this copy of the letter you sent to Mr. Rasky—

Mr. Malino: We will concede it is a copy.

A. Yes.

Mr. Garment: Dated May 1, 1954.

"Mr. Frank Rasky, Jackson Heights, Long Island.

"Dear Mr. Rasky, Your letter of April 28th received.

"For the best interests of our children we have felt that it was best to avoid any course of action that might remind them of our experience in September 1952.

"Following this policy we have refused all radio, television, magazine, newspaper, and so forth offers connected with that experience.

"Trusting that you will understand and abide by our feelings in this matter, I am, sincerely yours, James J. Hill."

* * * * * * *

Q. Was there an article written about you?

A. Not that I know of.

* * * * * * *

Q. Did there come a time when the Whitemarsh incident came up for discussion again?

A. Yes.

Q. When was that?

A. That was February 28, 1955.

Q. What happened at that time?

A. The Life article using our name was published then.

Q. Mr. Hill, immediately prior to that did you and Mrs. Hill know that the play had opened?

A. Yes.

[fol. 59] Q. Had you read any of the reviews of the play?

A. We had.

Q. Will you tell me which of those reviews you and Mrs. Hill read (handing papers to witness)?

A. I read four New York newspapers a day: The New York Times, New York Tribune, The Evening Journal and The Telegram, and I read the papers from front to back. These are the ones that I know I saw.

Q. Do you know whether Mrs. Hill saw any of these reviews?

A. When anything like that came up I showed them to her.

• • • • • • •

(The review from The Herald Tribune was received in evidence as Plaintiffs' Exhibit 9-A, from The New York Times as Plaintiffs' Exhibit 9-B and from The Journal-American as Plaintiffs' Exhibit 9-C.)

Q. Do you recall the day that you saw the Life article?

A. Yes.

Q. When was it?

A. That was on a Friday that the magazine was delivered to our home through the mail.

Q. That would have been a Friday in the month of February?

A. The latter part of February.

Q. Will you tell the jury how you saw it, how it was brought to your attention?

A. When I returned home Mrs. Hill handed me the magazine open to the article.

Q. Did you read the article?

A. I did.

• • • • • • •

Is that the fact, sir?

The Witness: Yes, sir.

Q. Apart from newspaper comment, when you reached Old Greenwich, Mr. Hill, was there any further comment on the part of individuals? And by that, I include questioning in connection with the Whitemarsh incident.

A. There was some from people that had known us in the Philadelphia area.

[fol. 51] Q. And about when did that die down?

A. Within several months after the first of the year.

Q. Now, did there come a time when the Whitemarsh incident came up for discussion again?

A. Yes.

Q. When was that?

A. That was in the spring of 1954.

Q. What event or events brought that about?

A. The publication of The Desperate Hours novel.

Q. Will you tell the jury what happened at that time.

A. Mrs. Hill received a copy of the novel from a Mrs. Elsa McKenzie of Philadelphia, a friend of ours. She also received a copy of a review which was sent to her by Mrs. Jack Anderson of the Philadelphia area.

Q. I show you this photograph of a review from the Philadelphia Inquirer and ask you whether that is a photograph of the review that was sent to Mrs. Hill?

A. It is.

• • • • • • •

(Photostat of article from Philadelphia Inquirer of February 21, 1954, as referred to, received in evidence as Plaintiffs' Exhibit 6.)

Mr. Garment: With your Honor's permission, I would like to read this to the jury.

The heading for this review is: "Convicts Hide In Home, Hold Family as Hostages. THE DESPERATE HOURS by Joseph Hayes, Random House," and so forth.

"In this tense compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past. Joseph Hayes has simply drawn to its logical conclusion, in a single time sequence, what might have happened when three escaped convicts took over the home of a well-known Whitemarsh physician as a hideout and [fol. 52] held members of the family hostages for a considerable length of time before moving on.

"The author has transferred his locale to the outskirts of Indianapolis; his convicts are from Terre Haute instead of Bellefonte, and he has peopled the house of the captives to suit his own purposes. Beyond that, with compelling detail and deft characterization, he has played out the story that could have developed in Whitemarsh if circumstances had brought the police into it in time.

"'The Desperate Hours' has terrific emotional impact playing as it does on the fears and divided loyalties of the trapped father, Dan Hilliard; the disillusionment of his small son Ralph and the latter's ultimate recovery of faith in his dad's knowledge and strength and the courage-close-to-tears of Hilliard's wife and daughter.

"Hayes has made his convicts, too, actual human beings rather than figures of stock. They are hardly admirable but one knows how they feel and why, without being subjected to case histories.

"This is the first full-length novel by a short-story writer who already has made a name for himself in the magazine and television fields.

Many a veteran novelist could envy him his skill."

By Mr. Garment:

Q. Did you read The Desperate Hours at that time, Mr. Hill?

A. No, I did not.

Q. Do you know whether Mrs. Hill read The Desperate Hours at that time?

A. I don't know.

[fol. 53] Q. Did you and Mrs. Hill see any other reviews of The Desperate Hours, particularly reviews in New York newspapers?

A. Yes, we did.

Q. I show you photostats of several reviews. I would like you to indicate to me which of those you and Mrs. Hill read. (Handing paper to witness.)

A. We read all of these.

* * * * * * *

(Photostats of four reviews referred to received in evidence as Plaintiffs' Exhibit 7.)

Mr. Garment: I propose to read just one of these reviews.

This is a review from the Sunday Times entitled "Nightmare at The Hilliards"—"The Desperate Hours," and so forth.

"Billed as a novel of suspense, his book earns its title from the first breathless paragraph. The story line is a familiar one (what happens when a trio of mad dog convicts hole up in an average home after a jailbreak). So, inevitably, are most plot patterns in novels of this genre: it is the treatment, not the ingredients that really matters. Mr. Hayes has milked the last drop of horror from his macabre situation. As a Hitchcock-type nightmare, 'The Desperate Hours' is a strictly Grade-A job.

"As we have said, the story hits its stride on the first page, when the three escaped hoodlums ghost out of a woodlot (like lonesome jackals on the prowl), capture a farmer's car and go roaring south to Indianapolis, to make rendezvous with a lady who'll bring funds to complete their getaway. The pace never slackens as the trio enters the suburban home of the Hilliards (a house selected at random, [fol. 54] thanks to its comparative isolation). Eleanor Hilliard is pinned down to her living room, just as she is finishing her afternoon's housekeeping. So is 11 year old Ralphie, as he comes rollicking in after school. So are 19 year old Cindy and Dan Hilliard, as they return from their respective jobs—and the nightmare is smoothly in gear.

"What happens thereafter is Mr. Hayes' story. Other characters move into the fringes of the main action as the novel goes careening towards its fearful finale—Cindy's playboy fiance (who turns out to be anything but that in the closing chapters), a demon-ridden sheriff whose resemblance to TV's Joe Friday is, after all, only coincidental. The author draws each member of his hard pressed cast with a sharp, true pen. When you have turned to the last page you'll find the Hilliards are as convincing (and as cohesive) as the family next door. So, for that matter are the convicts themselves. These are completely evil men, doomed and damned almost from birth. Yet they are completely human, too, from first to last. This, perhaps, is the book's most ominous social comment.

"This is Mr. Hayes' first novel. A publisher's note informs us that he learned his trade via the television studio and the slick short-story mill. Some of that slickness is in evidence here and there. Some of the drama is a bit contrived, and the ending, for all its biblical inevitability, seems designed for the camera's eye rather than the reading lamp. But these are minor points in a novel of nerve-shattering impact. 'The Desperate Hours' (a Literary Guild choice for [fol. 55] March) is a whale of a good yarn. But don't begin it after midnight, unless you have company."

By Mr. Garment:

Q. Mr. Hill, after you and Mrs. Hill received the copy of the book, copy of that review from the Philadelphia newspaper that I introduced into evidence, and after you read the reviews, did you and she discuss The Desperate Hours?

A. We did.

• • • • • • •

Q. Mr. Hill, will you tell me what your reaction was?

A. I was quite disturbed about it, naturally.

Q. Would you tell me what your feeling was, briefly.

(February 28, 1955 issue of Life Magazine received in evidence as Plaintiffs' Exhibit 10.)

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[fol. 60] Q. Mr. Hill, do you know what the balance of that headline said that is printed in the top left?

A. May I see it?

Q. Yes.

A. No, I don't.

Q. And the house, of course, that appears in the top right is a photograph of your house?

A. It is.

Q. On the second page under the heading "True Crime. Three crises at a back door," would that appear to be the back door of your house at Whitemarsh?

A. Yes, sir. That was the door that we used as the main entrance coming from the driveway.

Q. Did any of the scenes that are depicted on page 78, at the back door of your house, happen in your incident?

A. No. We weren't outside of the house in our incident.

Q. Did any of the scenes that are depicted on page 78 of the article take place in your incident?

A. No.

Q. Mr. Hill, would you tell the Court and jury what your reaction was when you saw that article that night?

A. Well, at first I was amazed when my wife handed me the article and I saw the James J. Hill name. I couldn't believe what I saw. Then I began to consider what this was going to mean to my family and to myself, and I was very disturbed. Mrs. Hill was very disturbed, and I got madder and madder—

Mr. Medina: I object, your Honor. This witness was asked for his own reaction and he is perfectly able to understand that.

The Court: Objection sustained. Strike it out.

Just tell us your reaction.

A. (continuing) I got madder and madder. You have to understand that for two and a half years we had done everything humanly possible to put the Whitemarsh inci-

dent behind us. We wanted to forget it, individually and as [fol. 61] a family. Right after the incident we had made it clear to everyone that there had been no violence, that there had been no molesting of my wife or of my daughters, there had been no profanity, and that there had been no harm to any of us. And then The Desperate Hours novel came out and a wave of speculation started, and we told everyone that this was not our story; that we had nothing to do with it; that we weren't connected with it in any way; that there had been no violence in our incident; that we weren't cashing in on the incident, and so on.

Then the play came out, with the same thing happening—

Mr. Medina: Your Honor, I think this witness was only asked for his reaction.

The Court: That's what he is telling us.

Mr. Medina: It seems to me he is going somewhat beyond that.

A. (continuing) Here, without any reservation whatsoever, Life was saying that The Desperate Hours story was the story of my family, of James J. Hill and his family, with no reservation whatsoever. I knew that there was the book. I knew that there was the play. And I knew that a moving picture was going to appear later on. I knew that everyone would tie us in to The Desperate Hours, to the violence and to the killings that were in the story. I felt like they were going to believe that we were liars or phonies because we had told everyone at the start that in the Whitemarsh incident nothing like that had happened to us.

I was so angry as I was going through this that I just didn't—I wanted to be careful of what I said to Mrs. Hill. Mrs. Hill wasn't well at the time. I wondered what was going to happen to her as a result of this.

[fol. 62] Over the weekend we discussed the Life article, discussed what we could do. We saw that the actors of the play had been taken to our old home and photographed there, and we figured that Joseph Hayes had told Life that the real story was his play or the book, as to what had actually happened to us at Whitemarsh in 1952.

We couldn't understand how a responsible person could do that just for the sake of some free publicity. We certainly couldn't understand how Life Magazine could publish an article such as this without first checking the newspapers or at least picking up a telephone to find out whether this was the truth or how we felt about it. It was just like we didn't exist, like we were dirt, like they didn't care.

Q. Mr. Hill—

A. As I went over this, I got madder and madder. I could see that everything that we had done was going down the drain, was wiped out just in one minute; that we were going to be subjected from that time on to continued, added insinuations, insults and so on. I was so mad at the time I just wanted to get my hands on Joseph Hayes and on the Life crew that had pulled this stunt.

Q. Mr. Hill, did you take some action very shortly after that?

A. Yes, I did.

Q. Did you discuss that with your wife before you did?

A. We discussed it and we decided on the action we would take.

Q. What did you do?

A. I went to see my friend, Bob Guthrie.

Q. And who is he?

A. Bob Guthrie is an attorney with your firm. And I asked him what my rights were and what steps I could take.

Q. When did you go to see him?

A. It was either the Monday or the Tuesday following that weekend.

[fol. 63] Q. And this lawsuit eventuated out of that meeting with him?

A. It did.

Q. Mr. Hill, was there comment and questioning from persons after the Life article? Just answer that yes or no.

A. Yes.

* * * * * * *

April 6, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * * * *

JAMES J. HILL, one of the plaintiffs, resumed the stand and, still being under oath, testified further as follows:

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Hill, I want to go back to a subject matter that I was questioning you about yesterday as to which certain objections were made. You testified, did you not, that at the time of the original incident there were requests for news interviews by the assembled members of the press at your home and that you and Mrs. Hill gave interviews to the press. Is that correct?

A. I did.

Q. And that on subsequent occasions, particularly in connection with your move from Whitemarsh, there were requests made for statements and articles were published about the family's move from Whitemarsh. Do you recall that?

A. Yes.

Q. I also asked you yesterday, Mr. Hill, whether you had in addition to requests for interviews from the primary [fol. 64] press media received various offers and proposals for television appearances, paid interviews, collaboration in feature articles and other forms of publicity. Do you recall that?

* * * * * * *

By Mr. Garment:

Q. Do you recall that I asked you about that?

A. Yes.

Q. And you said you had received such offers?

A. I did.

Q. And, further, that you had rejected such offers?

A. I rejected all offers.

Q. You rejected all offers.

A. Yes, sir.

Q. And the last of those requests or offers for paid publicity was the written request from Frank Rasky, to which you responded in writing in April 1954. Is that correct?

A. That's correct.

Q. Mr. Hill, would you tell the jury what distinction you and Mrs. Hill drew between interviews to the primary press media at the time of the incident and these other offers for interviews and paid publicity?

Mr. Medina: I object to the question, your Honor. It seems to me that's outside of your Honor's ruling. I may be mistaken.

The Court: No, the rulings I made earlier, I don't know whether they covered this particular point, although you did, Mr. Garment, cover it in the memorandum which you submitted to the Court this morning. However, we did not discuss it in the robing room as we did the other points.

Mr. Garment: I believe we did.

The Court: At any rate, I am going to overrule the objection.

[fol. 65] Mr. Medina: May I have a continuing objection to this type of testimony?

The Court: Yes, you may have an objection.

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By Mr. Garment:

Q. Do you have the question in mind, Mr. Hill?

A. I have.

Q. Go ahead.

A. At the time of the incident we knew that we would have to make a statement to the press, to tell them about the events. The head FBI officer and the head State Police officer told me that we would just have to make a statement, that there was no way that they could clear the yard unless we did give that statement.

Also we wanted the fact be made known clearly to the public that there had been no violence, that no one had been harmed, that my wife and daughter certainly hadn't been violated.

We knew of other hostage incidents that we had heard about in the newspapers in previous years and we knew that lots of things of that type did happen. We were surprised and thankful that nothing like that had occurred to us and we wanted everybody to know exactly what had occurred during the entire period that the convicts were at our house.

After that point we felt that for our family's welfare that we weren't interested in any publicity of any sort. We wanted to put it behind us. We wanted to take it out of our minds just as quickly and as completely as we possibly could. We had no desire to cash in on the publicity. We weren't interested in making public appearances and making a spectacle out of the family in any way. We just [fol. 66] wanted to calm this thing down and get rid of it just as quickly and as fully as we possibly could.

Q. Well, now, Mr. Hill, we have come all the way back to where we were at the close of business yesterday afternoon when you had completed testifying about your immediate reaction to the Life article when you saw it, and I want to ask you now to state as briefly as you can what Mrs. Hill's reaction was as you observed it.

A. Well, her reaction was the same as mine. We had talked about what would be best for our family. We came to an agreement that that was what we would do.

Q. I am talking about the reaction of Mrs. Hill the night that you and she saw the Life article.

A. Her reaction was very similar to mine. She was quite angry at it. She was more bewildered than angered, she was just stunned by it, she couldn't accept the fact that it had happened to us.

* * * * * * *

Cross examination.

By Mr. Medina:

Q. Have you ever seen the motion picture The Desperate Hours, Mr. Hill?

A. No, sir.

Q. Did you ever see the play?

A. No, sir.

Q. When did you first read the novel?

A. I would say several years after the Life magazine article came out.

Q. That would be 1956, 1957?

A. Not before that.

Q. When did you start this action?

A. I think the official time was October of 1955.

Q. Don't you remember that the summons in this action was served in June of 1955?

A. I don't remember the exact dates as to what you would call the official opening of it or not. I am not cognizant of court terms like that.

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[fol. 67] Q. The Desperate Hours novel was based upon the incident that happened to you in September 1952, wasn't it?

A. No, it wasn't.

Q. Wasn't it based upon the actual occurrence of September 1952 in which plaintiffs Hill were involved—and I quote—

A. At the time we thought it was based on it, because from the information that I had the Life article said that this was the story of The Desperate Hours, this was the story that was to be in the play, it was to be in the motion picture, et cetera. So I figured at the time that Joseph Hayes had told Life what had happened was the story as he told it in the play, what had happened at Whitemarsh.

Q. But you did verify the complaint in this case on October, 1955, didn't you?

A. To the best of my belief at the time.

Q. And you swore to it at that time, didn't you?

A. I swore to the best of my belief just as it appeared in Life magazine.

Q. And you also swore at that time that the novel and the play were a portrayal of you, didn't you?

A. I had not seen the play, I had not seen the novel. That is what the Life article said, Mr. Medina.

Mr. Medina: I ask that the answer be stricken as not responsive, your Honor.

The Court: Overruled.

Mr. Garment: Mr. Medina, would you indicate what paragraph you are referring to?

Mr. Medina: I am referring to Paragraph 22 of the original complaint, and to Paragraphs 15, 25, 40 and 47 of the second amended complaint.

[fol. 68] Mr. Garment: Do you want to read the rest of that paragraph as to what it says about a portrayal?

Mr. Medina: You are privileged to do that, Mr. Garment. Do you suppose you could let me go ahead without interruption? You have had your say.

Mr. Garment: All right, if you want to do it on that basis.

Mr. Hill, you have that material before you?

Would you read the last question back?

The Court: He has answered the question. Counsel in fact has objected on the ground it wasn't responsive, and that objection was overruled.

Read the question and answer.

(The question and answer were read by the reporter.)

Mr. Medina: I want to press this objection, because that paragraph of the complaint is a conclusory paragraph alleging that this was a portrayal within the meaning of the Civil Rights Law.

The Court: The witness has answered the question, in my opinion.

By Mr. Medina:

Q. When you started your original suit you named as a defendant Mr. Hayes, didn't you?

A. Yes, sir.

Q. And Mrs. Hayes?

A. Yes, sir.

Q. And Mr. Erskine?

A. Yes, sir.

Q. And the Desperate Hours Company?

A. Yes, sir.

Q. And Time, Inc.?

A. Yes, sir.

[fol. 69] Q. And Paramount Pictures?

A. Yes, sir.

Q. And Random House?

A. Yes, sir.

Q. And the Literary Guild?

A. Yes, sir.

Q. And Crowell-Collier Publishing Company?

A. Yes, sir.

Q. And Pocket Books?

A. Yes, sir.

Q. And Readers Digest?

A. Yes, sir.

Q. And Paramount Pictures had put out the motion picture The Desperate Hours, hadn't they?

A. Yes.

Q. And the Literary Guild of America and Random House had published the book, hadn't they?

A. Yes, sir.

Q. And Crowell-Collier Publishing Company had had a serialization of the novel in Collier's Magazine, hadn't it?

A. Yes, it did.

Q. And then the Readers Digest published a condensation of the novel, didn't it?

A. Yes, sir.

Q. And then Pocket Books put the novel in a pocket book, didn't it?

A. I saw a pocket book.

Q. And when you sued all those defendants you stated in Paragraph 22 of the complaint, to which you swore, that in truth and in fact "Said novel was based upon the actual occurrence of September 1952 in which plaintiffs Hill were involved," didn't you?

A. "As above set forth with certain modifications of the actual facts, including the partial modification of the name of the family involved from Hill to Hilliard, the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of the members of the besieged family."

[fol. 70] Q. That is the full paragraph, isn't it?

A. That's what I swore to.

Q. But you did say it was based upon the actual occurrence, didn't you?

A. I said it was based on the actual occurrence because that was what Time in their Life article had published, that it was the story of the James J. Hill family.

Q. Now, then, there came a time that you served another complaint in the case, didn't there?

A. I don't know the exact order of the proceedings. Which one are you referring to?

Q. Didn't you have a first amended complaint which was verified by Mrs. Hill on March 7, 1956? Isn't that so?

A. This is a copy of an amended complaint. What was the date?

Q. Verified by Mrs. Hill on March 7, 1956, which means that she swore to it.

A. Yes, that is correct, the 7th day of March 1956.

Q. And in Paragraph 7 of that complaint you repeated the paragraph you had had in the prior complaint and said that the novel was based upon the actual occurrence of September 1952, didn't you?

A. Well, Paragraph 7 says: "In truth and in fact said novel purported to depict plaintiffs and members of their family and was based upon the actual occurrence of September 1952, in which plaintiffs Hill and their family were involved, as above set forth, with certain modifications of the actual facts, including the partial modification of the

name of the family involved from Hill to Hilliard, the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter and with numerous other fictional embellishments in the characteriza-
[fol. 71] tion of the personalities, relationships, attitudes and acts of plaintiffs and the members of their family."

Q. But you did say that the novel was based upon the occurrence of 1952, didn't you?

A. I said that because Life had put it in black and white with no reservations whatsoever that The Desperate Hours story was the story of the James J. Hill family, and connected me with the moving picture which was to come out later. It said you can see the story and you can see the play which is also the story.

Q. Can't you answer me with a yes or no, without a speech?

A. Mr. Medina, I want to answer your questions as best I can. But I can't answer it yes or no.

Q. You also said that the novel—and I quote, "constituted a portrayal of plaintiff James J. Hill," didn't you?

A. Where are you reading this?

Q. Paragraph 15.

A. Of the same complaint?

Q. Of the same complaint. Or you can look at Paragraph 26 or Paragraph 42 or Paragraph 49. They all say the same thing.

A. Would you like me to read all of those paragraphs?

Mr. Garment: That is not necessary.

Q. Can't you answer me whether you stated that the novel was a portrayal of James J. Hill?

A. It was—I said it was a portrayal with reservations.

Q. Then there came a time when you got another complaint in this case, didn't there?

A. As I told you, I wouldn't remember the direct pleadings in this case.

Q. Well, there is a second amended complaint that you verified on July 3, 1956, isn't there?

A. Let's see.

Q. You swore to it.

A. What paragraph is that, sir.

Q. Paragraph 7—rather I am referring to the verification which is attached at the end, in which you say that it is [fol. 72] true of your own knowledge except as to the matters stated to be alleged upon information and belief.

A. That's right.

The Court: I think the question was, was there another complaint.

Mr. Medina: Yes, that is the question, really.

The Court: The answer to that is "Yes"?

The Witness: Yes.

The Court: And that you verified it on what date?

The Witness: July 3, 1956.

Q. There you stated as of your own knowledge, and not on information and belief, that the novel—in Paragraph 7: "The novel was based upon the actual occurrences of September 1952," didn't you?

A. I stated as it is listed here in Paragraph 7.

Mr. Garment: Is this the second amended complaint that you are referring to?

Mr. Medina: Yes, sir.

Mr. Garment: This is before any of the examinations and discovery proceedings, Mr. Medina.

Mr. Medina: You are entitled to bring out anything you want, Mr. Garment. I am just asking some questions.

The Witness: This was according to my knowledge at the time.

Q. You also swore in Paragraphs 15, 25, 40 and 47 that the novel was a portrayal of plaintiff James J. Hill, didn't you?

A. 15 and what?

Q. 15, 25, 40, 47.

A. And what was your question?

[fol. 73] Q. And you swore that the novel was a portrayal of plaintiff James J. Hill.

A. Yes, I swore that it was a portrayal of the plaintiff James J. Hill, "and a use of his name and portrait by defendants," and so on. That is 15. And what was the other one?

Q. Well, that is enough for our purposes.

A. I can't give you all of them unless I get a chance to look at them.

Q. All right, 15, 25, 40, 47.

A. Yes, I swore to them as being a portrayal of myself, to the best of my belief at that time.

Q. And, of course, it was necessary, if you were going to sue Paramount Pictures and Random House and the Literary Guild and Collier's and Pocket Books and the Readers Digest, that you state that what they had printed was a portrayal of you, wasn't it?

Mr. Garment: I think that asks the witness to draw a legal conclusion. These pleadings were drawn by lawyers.

The Court: Objection sustained.

Q. Then there came a time for you to serve another complaint in this action, didn't there?

A. Yes. There were numerous servings throughout the seven years.

Q. No, I am talking of the last one. This one you swore to on March 5, 1958. Isn't that the last one?

A. I don't know, there were so many of them.

Q. Didn't you verify a third amended complaint on March 5, 1958?

Mr. Garment: Why don't you show it to him?

A. The 5th day of March 1958?

Q. Yes.

A. Signed by James J. Hill?

[fol. 74] Q. Yes.

A. Yes.

Q. Now, in that complaint you dropped the defendants Mrs. Hayes and Paramount Pictures and Random House and the Literary Guild and Crowell-Collier and Pocket Books and Readers Digest, didn't you?

A. Yes.

Q. And you just sued Mr. Hayes, Mr. Erskine, The Desperate Hours Company and Time, Inc.

A. Yes.

Q. But in that complaint you now state that The Desperate Hours is not based upon the incident of 1952, don't you?

A. Yes.

Q. And it doesn't constitute a portrayal of you?

A. Yes.

Q. Isn't that correct?

A. Where is that? That The Desperate Hours did not constitute a portrayal of me?

Q. Yes.

A. Yes.

Q. And that is your present position?

A. Yes.

Q. Now, you amended your complaint in 1958 over the complaint which you last verified in 1956 and changed your statement, that the novel was based upon the occurrence, to a statement that the novel was not based upon the occurrence, because you knew that you had to state that if you were going to sue Time, Inc., didn't you?

Mr. Garment: I will object to the question.

A. No.

The Court: Objection sustained.

Q. Well, you certainly thought that the novel and the play invaded your privacy, didn't you?

Mr. Garment: I will object to that as argumentative.

The Court: I will permit that. Overruled.

[fol. 75] Do you understand the question.

The Witness: State the question again.

Q. You certainly thought that the novel and the play invaded your privacy?

A. At the time that the novel and the play came out, I resented the questioning that it aroused, that came up at

the time, naturally because of what was happening to my family because of it. In that way it did invade my privacy. There was no use of my name, though.

Q. Now, certainly many other people thought, long prior to the Life article, that the novel The Desperate Hours was based upon your incident, did they not?

A. I testified that the people that knew that we had lived in Whitemarsh, that we were the people involved in the Whitemarsh incident, and then knew about The Desperate Hours, they thought there was some connection.

Q. They had no trouble in putting two and two together, did they?

Mr. Garment: I will object to the form of that question.

The Court: Sustained as to form.

Q. There were many of your friends who long prior to the Life article thought that the novel was based upon the occurrence in September 1952, were there not?

• • • • • • •

A. Some of our friends did.

Q. And many of the business acquaintances that you saw also, long prior to the Life article, had drawn the same conclusion, had they not?

A. Some of them that knew about the Whitemarsh incident and also knew about The Desperate Hours.

[fol. 76] Q. As a matter of fact, as you have testified, a friend even sent you a copy of the book.

A. That is correct.

Q. But you did not read it?

A. No, I didn't read it—at the time.

Q. Well, the incident which occurred to you in September 1952 was located in a suburb of Philadelphia, was it not?

A. It was a farm house located in Whitemarsh Township, on the outskirts of Philadelphia.

Q. And these three convicts who arrived, arrived after 8 o'clock in the morning, didn't they?

A. Around 8:10 in the morning.

Q. And they left about 3:30 the following morning, did they not?

A. They left in two stages: 3:15 and around 3:45.

Q. And of the three convicts who appeared, two of them were brothers, were they not?

A. Yes.

Q. After the incident, you made a statement to the press, didn't you?

A. To what date are you referring?

Q. Well, did you make more than one?

A. No, I made one.

Q. When was that?

A. That was on Friday afternoon, after the incident occurred on Thursday, September 11.

Q. I show you a photograph and ask you if you can identify that as showing you making that statement.

A. Yes, sir.

Mr. Medina: I ask this be marked for identification.

(Photograph was marked Defendant Time Exhibit A for identification.)

Q. And the substance of that statement is what appears in The New York Times for September 13, 1952, which I [fol. 77] show you; isn't that correct?

A. I don't want to take the time to read all this, but I judge that this is the statement which in substance is what I gave.

Mr. Medina: I ask that that be marked for identification.

(Photostat of two pages from September 13 edition of The New York Times was marked Defendant Time Exhibit B for identification.)

Q. And essentially the same story appears in the Herald-Tribune for September 13, 1952, does it not?

A. I judge this is the same article.

Mr. Medina: I ask that this be marked for identification.

(Photostat of two pages from Herald-Tribune for September 13, 1952 was marked Defendant Time Exhibit C for identification.)

Q. I show you seven other newspaper extracts and ask you if these show stories which were published and dealt with your September 1952 incident, at or about that time—excuse me, there are six.

The Court: Perhaps you can get a concession from counsel on this.

Mr. Garment: I will concede anything that is—

The Court: We might save time.

Mr. Garment: That is in published form.

Mr. Medina: If you agree that they have been properly identified, I ask that those six be marked for identification as one exhibit.

Mr. Garment: Certainly.

[fol. 78] (Six photostats of newspaper extracts were marked Defendant Time Exhibit D for identification.)

Q. Likewise there was further publicity in the newspapers at the time that you left Pennsylvania to move to Connecticut, was there not?

A. Yes, sir.

Q. And this is an example of that, is it not?

A. Yes.

Mr. Medina: I ask that this be marked for identification.

(Photograph of article from Conshohocken Recorder was marked Defendant Time Exhibit E for identification.)

Q. You also had a little further newspaper attention in Novemebr of 1952, when you had a car accident, did you not (handing photostat to the witness)?

A. That is right.

Q. And that appears in this newspaper clipping which I show you?

A. Yes.

Mr. Medina: I ask that this be marked for identification.

(Conshohocken Recorder of Tuesday, November 25, 1952, photostat of article, was marked Defendant Time Exhibit F for identification.)

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AFTERNOON SESSION

JAMES J. HILL, one of the plaintiffs, resumed the stand and, still being under oath, testified further as follows:

Cross-examination.

By Mr. Medina (Continued):

Q. Mr. Hill, you had been damaged by the book The Desperate Hours long prior to the Life article, had you not?

[fol. 79] A. Mr. Medina, I am not able to say exactly how and by what I have been damaged, as to the degree and so on. I don't believe that The Desperate Hours novel helped my family in any way after the incident.

Q. But you had been damaged by the book prior to the Life article, had you not?

A. Yes, in that way.

Q. And you had been damaged because the book invaded your privacy with utter disregard to your family's rights, had you not?

Mr. Garment: Your Honor, I object to the form of the question. The objection will have to be a little bit complicated because the question is a little bit complicated. It is predicated upon allegations of the complaint, of the original complaint, which, in turn, were based upon the fact of the Life article prior to any examination of any defendants. We made various allegations with respect to all of the publications, as a matter of law, at that time.

Mr. Medina: As a matter of fact. It's in a sworn complaint, Mr. Garment.

The Court: It doesn't make any difference, gentlemen, what the complaint, whether the first or third, says.

The question is you were damaged, were you not, by—what was it, the play?

Mr. Medina: I am quoting: "—invaded your privacy with utter disregard for your family's rights."

The Court: The question is permissible. I will overrule the objection.

A. Yes.

[fol. 80] Q. And that is your own language as used by you upon the taking of your deposition; isn't it, and not in your complaint?

The Court: Wait a minute now—

Mr. Garment: We don't have a question of contradiction now. Before you use the deposition, there has to be some contradiction.

The Court: Let me hear the question.

(The reporter read the pending question.)

The Court: I will sustain the objection. If you want to go into any contradictions, you don't do it in that fashion.

Mr. Medina: I only said that, your Honor, because Mr. Garment had said I was quoting the complaint, whereas I was quoting Mr. Hill himself in his deposition.

Mr. Garment: Do you want to indicate what page you are referring to?

Mr. Medina: Page 91.

The Court: The objection is sustained.

Proceed.

* * * * * * *

Mr. Medina: . . . Incidentally, Mr. Garment and I have now been able to check into the facts of the matter. The summons in this action was drawn and dated on June 27, 1955 and it was served with the complaint on October 28, 1955.

* * * * * * *

[fol. 81] By Mr. Medina:

Q. Did you make any complaint to anyone at any time named as a party to this action prior to the institution of this suit?

A. When you say complaint, do you mean a legal complaint?

Q. No, did you write a letter to Paramount Pictures objecting to the motion picture?

A. No.

Q. Did you write to Mr. Hayes objecting to his book?

A. No.

Q. Did you get in touch with Time, Inc. regarding the Life article?

A. No.

Q. So that the first thing you did with respect to any of these defendants was the instituting of this action by the service of a summons and complaint in October 1955; is that not correct?

A. Mr. Medina, the article had been published. I couldn't withdraw the article. If I had gotten in touch with Life, it wouldn't have made any difference, the article was out on the street.

The Court: I will sustain the objection and strike the answer as not being responsive.

The question is you did nothing except to have this complaint served, the summons and complaint. You didn't complain at all prior to that time to any of these defendants.

The Witness: I started steps to bring action.

Q. But you didn't get in touch with any of the people named in this action until the action was actually commenced in October 1955; is it not correct?

A. Yes, sir.

* * * * * * *

Q. Incidentally, you reside and vote in Connecticut, do you not, Mr. Hill?

A. Yes.

[fol. 82] Q. The picture of the back door which is shown in Life, on page 76, and which was one of the doors of your house, that was the side door or back door, was it not, of your old house?

A. May I see it?

Q. Yes (handing magazine to witness).

A. This picture here, that was the center door (indicating). There were three doors on the front side, three on the back side. This was the center door, and you walk along here from the drive. You came in here and went into this door.

Q. Was that at the front or back of the house?

A. At the back of the house.

Q. At the back of the house. That's what I thought?

A. Yes.

* * * * * * *

Q. With respect to the defendants Mrs. Hayes, Paramount Pictures, Random House, Literary Guild, Crowell-Collier Publishing Company, Pocketbooks and Readers Digest, which were all in this case when it was first commenced, you voluntarily discontinued as to those remaining the defendants, didn't you?

A. Yes.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Hill, would you bear with me for a moment? I want to take you back to those earlier complaints that Mr. Medina asked you about, namely, the complaints prior to the present complaint in this action. Do you recall that Mr. Medina drew to your attention a particular paragraph that appeared in those earlier complaints in which the allegation was made by you that "The Desperate Hours" was based upon your true life incident and purported to be a [fol. 83] portrayal of your family but in fictionalized form. Do you recall that?

A. Yes.

Q. Now, what was your belief at the time you made that allegation?

A. I believed that the incident had inspired the writing of the novel, that it purported to be a story of what had happened to us but it was so changed, so fictionalized, that it absolutely wasn't our story at all.

Q. Was it actually your belief at that time that the author, Joseph Hayes, had been inspired by your incident to write The Desperate Hours and had based The Desperate Hours on your incident?

A. At the time I believed so.

Q. And what was the basis for that belief?

A. The Life Magazine in their article had said that The Desperate Hours was the story of our actual incident at Whitemarsh and that we would see it in Joseph Hayes' book, we would read it in his book, that we would see it in the play and that there was a motion picture later which would show that.

Q. And didn't the Life article also say that The Desperate Hours was inspired by your incident?

A. Yes, it did.

Q. What was your belief as to the source of information on the part of Life Magazine at that time for the statement that The Desperate Hours was based on your incident and was inspired particularly by it?

A. I thought that Joseph Hayes had told him that.

Q. Had you or anyone, to your knowledge, on your behalf made any investigation or had been in a position to make any investigation to determine how the article actually came about?

A. No.

Q. Did you know then as a matter of fact whether Joseph Hayes had told Life Magazine that The Desperate Hours was based on your incident?

A. I did not. I only believed it.

[fol. 84] Q. And was your belief the product of the Life article at that time?

A. Solely.

Q. And was your complaint at that time that the Life article stated that The Desperate Hours was the story of

your family, whereas in truth and in fact it was a work of fiction and not your story?

A. That was my complaint.

Q. The original action was brought against a number of parties, as Mr. Medina brought out this morning; is that correct?

A. Yes.

Q. The first party named at that time was Joseph Hayes, was it not?

A. That's correct.

Q. And was that in line with your belief that Joseph Hayes must have told Life Magazine that The Desperate Hours was inspired by your incident and based upon it?

A. That was my belief.

Q. You also named as party defendants in your first complaint, Mr. Hill, all of the publishers of the various versions of The Desperate Hours, including Collier's, The Literary Guild, The Readers Digest, Random House, Paramount Pictures, among others; is that correct?

A. I did.

Q. And was it your belief in naming all those parties that they together with Joseph Hayes had told Life that The Desperate Hours was based upon this incident so as to obtain publicity for all those publications?

A. I thought that they had done this together.

Q. Did you or your counsel know at that point what the actual facts were?

A. No.

Q. Had there been any testimony taken before trial at that time of any of those defendants?

A. No.

Mr. Medina: I will object to this question.

The Court: He has already said no.

I might indicate to all of you gentlemen and to this jury [fol. 85] that the only thing that is before this jury is the third amended complaint. Now, Mr. Medina's cross-examination went to the question of the credibility of this wit-

ness, and I don't want you to go into too much detail as to these other complaints.

Mr. Garment: That was the basis for his cross-examination, the first complaint drawn by the lawyers before they had taken any depositions of anybody concerned with this case.

By Mr. Garment:

Q. The next two complaints contained essentially the same allegation, did they not?

A. Yes.

* * * * * * *

Q. Do you know whether there had been any testimony taken or examinations of any of the defendants at that point or any documents produced in connection with or prior to the preparation and service of those next two complaints?

A. What date are you talking about?

Q. These would be prior to the service of the final complaint, which is the one in this action.

A. 1958?

Q. 1955, 1956.

A. I made a deposition in 1956—

Q. I'm referring to the defendants. Had your counsel, my firm, myself, taken the testimony of any of these defendants or obtained any documents from them to determine exactly how this article came about prior to the service of those next two complaints?

A. I don't believe so. My deposition was the first one, I thought.

Q. So that the next two complaints simply reiterated the allegation of the first complaint without any further facts being known to either you or your counsel?

A. So far as I know.

[fol. 86] The Court: May I suggest when you see counsel stand up, he is going to make an objection, and do not answer the question.

I will permit it; Mr. Medina.

Q. Now, Mr. Medina asked you about the dropping out of these various other publishers in connection with the preparation of the complaint which is before the Court at this point. Do you recall that question?

A. Yes.

Q. That series of questions?

A. Yes.

Q. Would you speak up a little bit, Mr. Hill.

A. Yes.

Q. Do you know whether that complaint was prepared after I, as your counsel, had examined representatives of Life Magazine and Joseph Hayes?

A. We are talking about the final complaint?

Q. Yes.

A. Yes, it was after.

Q. And was that complaint based upon the evidence that had been taken?

A. It was.

Mr. Malino: I object.

The Court: I don't see how this witness could answer that question. There is no question but that the lawyers drew these different complaints.

Mr. Garment: I wouldn't get into this subject, your Honor, if it hadn't been raised by Mr. Medina.

The Court: I think you have covered it. However, I think there is no doubt that this witness has testified that in between the second amended complaint and the present one, there were these examinations before trial.

Q. And that various of the defendants were dropped out as a result of matter—

[fol. 87] The Court: Objection sustained. He would not be in a position to know that unless you told it to him.

Q. And, in any event, Mr. Hill, after the examinations were taken, did you have any further complaint against the defendants who were dropped out of the case?

Mr. Medina: It calls for a conclusion.

The Court: The Court will certainly take judicial notice of the fact that the present complaint is not against any other defendants other than the three theatrical defendants and Time, Inc.

Mr. Garment: That's all I have in the way of redirect.

Recross examination.

By Mr. Malino:

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(Photostatic copy of two pages from New York Times, dated January 30, 1955, received in evidence as Defendant Hayes Exhibit G.)

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Recross examination.

By Mr. Medina:

Q. Mr. Hill, when you verified to your original complaint on October 13, 1955, Paragraph 22 of that complaint, to which we have referred, was sworn to by you to be true upon information and belief, was it not?

A. It was to the best of my knowledge at that time.

Q. And yet when you came to the second amended complaint, which you swore to on July 3, 1956, that was sworn to as of your own knowledge, was it not?

[fol. 88] Mr. Garment: And I take full responsibility for the pleadings that were drawn in this action.

Mr. Medina: I would think the person swearing would have something to do with it.

The Court: I will permit the question. No comment, please.

A. To the best of my knowledge.

Q. Didn't you sign your name before a notary public to the following paragraph: "James J. Hill, being duly sworn, deposes and says that he is one of the plaintiffs described in the foregoing second amended complaint; that

he has read the same and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information or belief, and that as to those matters he believes it to be true"? You did swear to that, did you not?

A. Yes.

Q. And Paragraph 7 is not upon information and belief, is it?

Mr. Garment: I will concede that it isn't.

Mr. Medina: I ask that the original complaint, the amended complaint and the second amended complaint be marked for identification.

The Court: Let them be deemed marked Defendant Time's Exhibit H for identification.

(The original complaint, the amended complaint and the second amended complaint were deemed marked as Defendant Time's Exhibit H for identification.)

Mr. Medina: That's all.

[fol. 89] Re-redirect examination.

By Mr. Garment:

Q. Mr. Hill, did you know any more of the facts—

The Court: I won't permit you to go into this except if you want to bring out the fact that all pleadings are drawn by lawyers.

Mr. Garment: That's what I am trying to bring out.

Q. These pleadings were drawn by me, weren't they?

A. Yes, sir.

Q. And then I submitted them to you?

A. Yes, sir.

Q. And you signed them.

A. And I signed them.

The Court: Any further questions now?

Mr. Medina: And you swore to them.

The Witness: Yes, sir.

Mr. Malino: Didn't you read them?

The Witness: Yes, sir, I read them. But after I read them—

Mr. Garment: Did you understand everything in them?

Mr. Medina: I object.

The Court: Sustained.

Step down.

(The witness was excused.)

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Mr. Garment: May I at this time offer in evidence the Samuel French edition of the play script of The Desperate Hours.

The Court: Any objection?

Mr. Medina: Only this, your Honor: This is a revision of the original play, not in the language part but in the setting of it to make it adaptable for use outside of New York City.

[fol. 90] The setting in this book makes the back door the front door. So that when Life has in its article in three places there was a scene at the back door, that it is perfectly true of the play in its Broadway edition. However, in this edition, revised so as to be used in a different setting, it appears as the front door.

As long as it is understood that the doors are okay in the Life story I have no objection to using this edition.

Mr. Garment: That we have no objection to.

The Court: It will be received as Plaintiffs' Exhibit 15.

(The Samuel French edition of The Desperate Hours was received in evidence as Plaintiffs' Exhibit 15.)

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April 9, 1962.

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

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JOSEPH HAYES, 1168 Westway Drive, Sarasota, Florida, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Hayes, you are the author of the screen play of the motion picture that the Court and jury saw this morning; are you not?

A. Yes, I am.

[fol. 91] Q. Before I go any further in the examination with you, Mr. Hayes, I would like to read to you simply the text of the article relating to The Desperate Hours which appeared in the February 28, 1955 issue of Life Magazine, which is Plaintiffs' Exhibit 10 in evidence.

You will recall, Mr. Hayes, that the article has a headline "BANK ROBBERS HOLD FAMILY IN WHITEMARSH PRISONERS," a photograph of a house, a caption starting with "Actual event" and then "TRUE CRIME INSPIRES TENSE PLAY" followed by the sub-heading "The ordeal of a family trapped by convicts gives Broadway a new thriller, The Desperate Hours."

Going to the text: "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes' novel The Desperate Hours, inspired by the family's experience. Now they can see the story reenacted in Hayes' Broadway play based on the book, and next year will see it in his movie which has been filmed but is being held up until the play has a chance to pay off.

"The play, directed by Robert Montgomery and expertly acted, is a heart stopping account of how a family rose to heroism in a crisis. Life photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next

page scenes from the play are reenacted on the site of the crime."

And then, you will recall, Mr. Hayes, that on the next page under the heading "True Crime" there were three scenes from the play photographed, according to the caption for the first photograph, at the real house. Do you [fol. 92] recall that, Mr. Hayes?

A. I recall that. But I would like to see that, if you are going to question me in detail on it.

Q. Certainly (handing Plaintiffs' Exhibit 10 to the witness). Mr. Hayes, in addition to authoring the screen play for The Desperate Hours, you were also the author of the novel The Desperate Hours, were you not?

A. That's correct.

Q. And you, and you alone, adapted the novel into the play The Desperate Hours?

A. That's right.

Q. When did you write the novel The Desperate Hours?

A. I wrote the novel of The Desperate Hours in the months of April and May 1953.

Q. And where did you write it?

A. In Bradenton Beach, Florida.

Q. When did you adapt the novel into the play The Desperate Hours?

A. Well, that spread over a long period of time, because I did the picture simultaneously and in between, I mean the picture script. To the best of my recollection, that would take in the beginning of the following February—the book came out in March—I would say somewhere in January, February, through that entire summer into the production of the play in that Fall, of 1954.

Q. So that the adaption of the novel The Desperate Hours into the play and the motion picture took place roughly at or about the same time?

A. Yes, in the same area of time, that's right.

Q. Would it be fair to say, Mr. Hayes, that the three versions of The Desperate Hours are essentially similar from the standpoint of plot?

A. Well, you have seen the picture, and once you read the play, you will realize there are great differences. But, of course, there are basically the same people involved in this situation.

[fol. 93] Q. The differences that exist are differences in detail; is that correct?

A. They are in detail, but there are great differences. They give different coloration to each version.

Q. Would it be fair to say, for example, that the play dealt somewhat more on the inner relationship between the various characters and what might be described as the psychological aspects of the characters?

A. Certainly, that's true. When a writer writes he always—if I were to write it tomorrow, I might write it differently. It's a creative process.

Q. That's what I was getting at. Following the publication of the book in 1954—

Mr. Garment: Withdrawn.

Q. Was The Desperate Hours also serialized in a national magazine?

A. Yes, it was.

Q. When was that?

A. That would be in the time probably within the six weeks previous to March 1, 1954. I would have to verify that, but that's my memory.

Q. That was in Collier's Magazine?

A. Collier's Magazine.

Q. Was it also a selection of the Literary Guild?

A. It was.

Q. The play went into rehearsal about what time, Mr. Hayes?

A. The play went into rehearsal on December 3, 1954.

Q. And it opened on Broadway in the month of February 1955?

A. February 10, 1955.

Q. When did the play complete its run on Broadway?

A. It completed its run sometime in, I think it was, June; it may have been July of 1955. In other words, it ran only

from February through July.

[fol. 94] Q. And were there touring companies of The Desperate Hours after that?

A. No, there were no touring companies of The Desperate Hours.

Q. Were there any productions of The Desperate Hours in other cities?

A. There were ultimately stock productions, as there always are, yes, but not by us.

Q. I want to take up with you, Mr. Hayes, your general background as a writer. Would you tell the jury briefly what your experience has been in the writing field prior to the writing of The Desperate Hours?

A. Well, I have been a free-lance writer—completely a free-lance writer since the war, since 1946 or 1947. I have written short stories for all the magazines. I wrote with my wife something like nineteen published plays for the Samuel French catalog done by American touring groups and schools and colleges. I wrote radio plays. I wrote television plays. And I was writing television plays when my youngster became ill, and that forced me to go to Florida. I went to Florida practically broke and wrote The Desperate Hours.

Q. Were you employed by Samuel French?

A. I was employed for a little over two years by Samuel French as an assistant editor.

Q. And in that connection, you would have had occasion to read a great many scripts submitted by authors?

A. Indeed, yes.

Q. I would like to discuss with you Mr. Hayes the writing process. I may have some difficulty with the terms, but I am sure you will be able to help me out.

A. I may have more.

Q. It is a fact, is it not, that an author of fiction in the present day, and throughout the history of literature, draws his material from the real world around him and from his own personal view of that world?

A. Certainly.

[fol. 95] Q. And, in addition, it would be fair to say, would it not, Mr. Hayes, that authors draw upon themes that have been popular in fiction, shaping those themes in terms of their own view of the subject matter and giving them a fresh approach?

A. That has been going on as long as there has been writing.

Q. And, in addition, the writer brings to the matter of the world around him and the standard themes of literature his own internal view of the world and experiences from his own life?

A. He should.

Q. And so the combination of these three basic elements through a process of thought and evolution, testing and trying, represents the creative process?

A. I would think that that's a rough approximation.

Q. And it would be fair to say, would it not, that the end result of this process of organizing and shaping a great many different materials into a novel work is something different from any of its parts?

A. Absolutely.

Q. Now, I want to talk to you about the application of this series of general principles to The Desperate Hours. The Desperate Hours involves the hostage theme, does it not?

A. Yes, it does.

Q. And that has been a theme that has interested writers for a great many years; is that true?

A. That's true. I myself wrote earlier—

Q. I will come to that, Mr. Hayes.

And it would be no mistake to say that it has been a theme of literature for hundreds of years?

Mr. Medina: I object to the form of that question. He is going pretty far in his preliminary questions.

[fol. 96] The Court: If the witness can answer it, I will permit it.

Overruled.

A. The answer is yes.

Q. There came a time, didn't there, Mr. Hayes, when you, as a writer, became interested in the hostage theme?

A. That is correct.

Q. When was that?

A. That was in 1947, when I first began free lancing with magazine writing.

Q. Would you please keep your voice up just a little bit.

A. Yes; sorry.

Q. And at or about that time, Mr. Hayes, did you write and was there published in a national magazine a short story involving the hostage theme?

A. There was.

Q. And was the name of that story "The Voice of Yesterday"?

A. It was.

Q. Mr. Hayes, would you look at this photostat and the covering affidavit—which I do not believe will be necessary—and state whether or not that is a true copy of the Voice of Yesterday?

A. Yes, this is a photostat of the story that appeared in the Woman's Home Companion, written by me.

Q. From the standpoint of the date, that would have been in 1946?

A. Yes.

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(Photostatic copy of the Voice of Yesterday was received in evidence as Plaintiffs' Exhibit 16.)

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Q. Mr. Hayes, the basic theme of the Voice of Yesterday—and correct me if I misstate it—was that of an individual, a father, compelled to perform certain acts by [fol. 97] reason of his being under the belief that his son was being held hostage?

A. That is correct.

Q. Now, from that point forward, while you were engaged in other creative efforts, were you interested in the hostage theme for purposes of some additional literary work?

A. Yes, I was.

Q. Let me ask you this, Mr. Hayes: You are a fairly disciplined and methodical craftsman in terms of accumulating materials and thinking them through before actually sitting down and starting to work. Wouldn't that be a fair statement?

A. In general, that's a fair statement.

Q. And has it been your procedure, working procedure, to take clippings from newspapers and from magazines of true life incidents involving some theme that interested you, accumulating those over the years?

A. It has been and still is.

Q. And you would keep files or folders of various subject matter and fill those folders as the years went along?

A. That's correct.

Q. Over the years, following the writing of the Voice of Yesterday, were there a number of hostage cases reported in the press and in magazines which came to your attention?

A. There were.

Q. I know it would be unreasonable to ask you at this point to approximate how many. But would it be fair to say that there were a great number?

A. Well, I think you would have to define a great number. I don't know how we arrived at it. I would only have my own memory, going back a number of years now, as to how many I had at the time.

Q. Would it be fair to say that there were many?

A. It would be fair.

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[fol. 98] Q. And when you saw the story of some person or persons held hostage, would it be your practice to clip that out of the newspaper or magazine and save it?

A. Yes. My wife or I might do it and maybe not look at it for a week or so, but we did it and made a file, yes.

Q. Do you recall generally, Mr. Hayes, that certain of those reports involved families held hostage?

A. Yes, of course, they did. May I just say one thing? I think we should make a distinction between held prisoner and held hostage.

Q. I think you have a good point. I'm glad you reminded me of it, as a matter of fact.

The term hostage connotes, doesn't it, someone who is held in a situation where he fears that—where he does something with the fear that somebody else might be harmed?

Mr. Medina: I object to the form of the question, your Honor.

The Court: Would you agree with that statement or do you want to give us your own definition?

Q. Perhaps it would be best if you defined it.

A. I would prefer to give my own.

Q. You may do that.

A. It would seem to me that a man held prisoner is a man held at the point of a gun or behind bars, and his basic concern is about himself.

It would seem to me that the hostage idea involves the idea of a man who is concerned about other human beings whom he loves and that the fact that a loved one is held hostage creates his basic motivation as opposed to trying to free himself personally and selfishly from the gun or the bars.

Would that be fair?

[fol. 99] Q. It sounds reasonable to me. In any event, whether the description be hostage or prisoner, there were numerous incidents of families whose homes were invaded by criminals and convicts and who were then held prisoner or hostage, as the case may be?

A. That is correct.

Q. Some of these cases involved three convicts, did they not?

A. Yes.

Q. And I am referring to cases apart from the Hill incident.

A. I can recall at least one other that did. I just couldn't recall the name of the case, but I can recall one.

Q. Well, to take one specific incident, do you recall one case in California?

A. I recall two in California, as a matter of fact, one involving three men. I do recall that, if that's what you mean.

Q. And was that a case where three escaped convicts waylaid an individual who was driving in his automobile and then took him to his home and then held the individual and his wife and two children prisoners?

Mr. Medina: Your Honor, I think we ought to have greater identification. If there is a newspaper clipping as to any of these incidents, it should be produced rather than obtaining something which may just be a figment of someone's imagination.

The Court: If the witness can remember, overruled.

A. I had a lot of clippings. Naturally, this took place a long time ago. I no longer have the clippings which I can produce.

The Court: The question was do you recall a case that happened in California.

The Witness: Very clearly.

[fol. 100] Q. And these three convicts went into this home and held this family, and, as a matter of fact, one of the convicts took the father, I believe into town to either buy or sell a car. Is that correct?

Mr. Medina: I object to this question, your Honor. He is now asking him for the actual facts.

Mr. Garment: I am talking about the news report, Judge Klein.

Mr. Medina: You didn't ask that question, Mr. Garment.

The Court: If he doesn't remember it in that form, the witness can so state.

Do you remember a case like that?

The Witness: I remember that case.

Q. Let me make this clear at the outset, to save time. In relation to all of these cases we are talking about news clippings, are we not?

A. We are.

Q. Or we are talking about magazine articles is that correct?

A. That's correct.

Q. In none of these cases did you actually do personal research into the facts of the case; is that correct?

A. That's correct.

Q. In none of these cases did you actually interview the persons involved to determine whether or not the news clipping was a faithful account; is that correct?

A. I never did.

Q. I am not quite sure that we have an answer to the question that I asked you—

A. I did remember the California case.

Q. And it did involve one of the convicts taking the father into town to either buy or sell an automobile?

A. Yes, it did.

[fol. 101] Q. Do you recall another case involving three convicts that, I believe, took place in Ohio, which had a rather tragic ending?

A. Yes, I do. I had forgotten it. Yes, I do.

Q. And in that case do you recall how the captivity of those persons by those three convicts ended?

A. It seems to me that the entire family was shot by the men in the head.

Q. Now, Mr. Hayes, there have been cases—and I am referring to hostage or prisoner cases—where the criminals or convicts were brothers—and I am referring to cases other than the Hills'—isn't that true?

A. I am not sure of that. No, I am not sure of that.

Q. Do you recall the—well, suppose we hold that for a moment.

There have been cases which have ended non-violently?

A. Oh, yes.

Q. And there have been, as you indicated, cases which ended violently?

A. Correct.

Q. Would it also be fair to say that in many of these cases there were multi-state police alarms and posses out for the convicts?

A. Yes, indeed.

Q. And would it also be fair to say that in many of these cases clothing was taken from the family by the convicts?

A. I wouldn't be able to answer that absolutely as to detail.

* * * * * * *

Q. Apart from these hostage cases, is it a fact, Mr. Hayes, that your home during the period starting in 1946, that is, after the Voice of Yesterday, was in or near Danbury, Connecticut?

A. That is true.

Q. And what is the name of the community where it was located?

A. Brookfield Center.

Q. It is true, is it not, Mr. Hayes, that your home overlooked the Danbury Federal Penitentiary?

A. That is true.

[fol. 102] Q. Would it be fair to say that as you read about these many cases of people or families held hostage by criminals or convicts you thought, as a writer, about the possibility of convicts from that prison escaping and entering your own home?

A. I would say it would be a recurrent thought, yes.

Q. It would be a recurrent thought?

A. Yes.

Q. And would it be fair to say altogether, Mr. Hayes, that out of all of these elements—the classic hostage theme, the many news and magazine accounts of homes, houses

and families held prisoner by convicts and criminals, and your own personal location near a penitentiary, out of all these elements, The Desperate Hours was shaped?

A. I would say from those elements and others.

Q. And other elements.

A. Yes.

Q. In other words, Mr. Hayes, the creation of a literary work is the result of the pulling together of almost an infinite number of pieces and parts; isn't that true?

A. I think that's true.

Q. And it is a process that comes at the end of years of thought, of years of exposure to the real world and of years of pondering how to put those elements together in dramatic form?

A. That's true. It sometimes takes something to trigger the actual doing of the thing.

* * * * * * *

Q. As an example of the many parts that are involved in a novel, isn't it true that you read of an incident involving a young mother and her infant daughter who were held at knife point by a criminal? Do you recall that?

A. Yes, I do recall that, in Mahopac, New York.

Q. That was a case that took place in New York State.

A. Right.

[fol. 103] Q. Sometime before you wrote The Desperate Hours.

A. Yes. It was within a year or so.

Q. As a matter of fact, it was in the year 1952, was it not?

A. I don't recall that.

Q. And in that incident, when this criminal was approached, by the police, he threatened to stab the girl if they did not permit him to escape; isn't that true?

A. That is true.

Q. And in the ensuing battle he killed the girl, did he not?

A. He did.

Q. And he was subsequently executed for that crime?
A. I believe he was.

Q. As an author, that element was utilized by you, quite properly, of course, as a part of The Desperate Hours; isn't that true?

A. Yes, certainly.

Mr. Garment: May I, with your Honor's permission, read a very short passage from the novel which is in evidence as Plaintiffs' Exhibit 12.

The Court: All right.

Mr. Garment: "Finally Glenn straightened, reached into his pocket and drew out something small which Dan could not see. The young man crossed to Eleanor, and Dan felt himself stiffen. In that instance he knew, with only faint surprise, that under the same or similar circumstances he would be unable to do anything but what he had just done when Robish grabbed Ralphie. That or worse. Next time, perhaps right now, he might kill one of them.

"'Read it,' Glenn said, 'read it loud enough so your old man can hear it, Mrs. Hilliard.'

"Dan heard his wife's tight voice begin to read, after she had unfolded the yellow frayed newspaper clipping, and [fol. 104] he had to concentrate very hard over the scorching ache in order to catch the significance of the words.

"What she read was a dispassionate newsservice story of an occurrence in New York State. It described, in some detail, the manner in which a convict, attempting to escape from a police net surrounding a small house in which he was hiding, had brutally killed a small girl when the police fired at him as he left the house. He had climbed into a small pick-up truck, holding the girl in front of him. Even though wounded himself by police fire, he had shot the girl through the stomach"—and so forth.

Q. That was the example that you referred to?
A. Yes, that was one of the cases.

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Mr. Garment: I think it should be stated, since there have been a number of comments about the play and the motion picture and the novel, that it was the novel that was the first representation of The Desperate Hours.

Q. Isn't that correct?

A. That is true.

Q. And to the extent that you were inspired by this array of thoughts, events, acts, attitudes, and so forth, that would have been the novel The Desperate Hours; isn't that true?

A. Yes.

• • • • • • •

Q. Isn't it a fact, Mr. Hayes, that you gave interviews with respect to the writing of The Desperate Hours?

A. Many interviews.

[fol. 105] Q. And those interviews were arranged by Random House, were they not?

A. Principally, yes.

Q. And that would have been a normal part of the publicity relating to any novel?

A. Yes.

Q. And in those interviews you were asked questions and gave answers, and I am sure that you gave truthful and fair answers to those questions. Isn't that a fact?

A. I tried to.

Q. And, in addition, as part of the ordinary job of collaborating on publicity you wrote various articles about The Desperate Hours which were published in newspapers of note?

A. When I was asked, I did, yes.

Q. I would first like to show you, Mr. Hayes, the book review of The Desperate Hours which appeared in the Herald Tribune of March 4, 1954—that is the fourth page of Exhibit 7—and ask you whether the first paragraph and the following sentence were substantially an accurate reproduction of statements that you made (handing Plaintiffs' Exhibit 7 to the witness).

A. Yes, that's substantially what I said.

Mr. Garment: With your Honor's permission, I would like to read that first paragraph in evidence.

This is a book review by Lewis Gannett in the Herald Tribune.

"From his hilltop in Bridgewater, Connecticut, Joseph Hayes can see at night the circle of lights that marks Danbury Federal Prison. And when he has just read in the newspapers of a convict who escaped from prison, broke into some lonely homestead and forced the family to do his bidding as hostages, he looked at those bright lights, and at his red-haired wife and red-haired sons, and wonders, [fol. 106] 'What if there were a prison break and one or more of those desperate men escaped in this direction?'

"His wondering led him to spin the high-tension story that is the Literary Guild's March selection."

Q. Mr. Hayes, do you recall that you were interviewed by Mr. Emory Lewis of Cue Magazine in the latter part of 1954?

A. I am sorry, I don't.

Q. Perhaps I can refresh your recollection. I show you this article from Cue Magazine for February 5, 1955 and ask you whether that refreshes your recollection as to having given an interview to Mr. Emory Lewis of that magazine (handing paper to witness).

A. Yes, I remember this.

Q. And, again, that interview as published in Cue Magazine fairly reproduced—

A. I am sure it does.

Q. —fairly reproduced your remarks to Mr. Lewis?

A. Right.

Mr. Garment: I have a photostat of just that page, which I offer in evidence.

The Court: Any objection?

Mr. Malino: I have no objection.

Mr. Medina: I object to this, your Honor; it is pure hearsay.

Mr. Garment: Pure what?

Mr. Medina: Hearsay.

Mr. Garment: It's a declaration by a defendant which he says is true.

Mr. Medina: It is just a double hearsay in an endeavor to prove some other fact through the mouth of an author in [fol. 107] Cue, whom I cannot cross-examine, when the man who is supposed to have made the statement is right here.

The Court: If he says that this is exactly what he said to this man who was interviewing him, I will receive it.

The objection is overruled.

The Witness: I would like to acquaint myself with this more thoroughly, if you are going into it. I say I gave the interview. I don't know what is at issue here; I have no idea. This is a surprise to me.

Mr. Medina: I think maybe, perhaps, Mr. Hayes should be given an opportunity to read it more carefully.

The Court: Certainly. I thought he had.

Mr. Garment: By all means.

(The photostat referred to was handed to the witness.)

The Witness: Thank you.

The Court: Is that substantially what you told that man?

The Witness: Yes.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 17.

(Photostat of Emory Lewis' article in Cue Magazine was received in evidence as Plaintiffs' Exhibit 17.)

By Mr. Garment:

Q. Before I show this to the jury, I want to get the time sequence clear. This article was published on February 5, 1955. Do you recall how long before that you gave this interview to Mr. Lewis?

A. No, I am sorry, I don't.

[fol. 108] Mr. Medina: There has been no proof of publication. The date of the magazine happens to be February

5th. Many times the magazine will come out either before or after the actual date appearing on it.

Mr. Garment: In any event, on or about February 5, 1955.

Q. Was it before the Life article of February 28, 1955?

A. Yes, that would be correct.

Q. And at or about the time that Life was preparing the article relating to The Desperate Hours; isn't that true?

A. Well, I wouldn't know that; I would assume it. They had taken the pictures, but I had no contact with them.

Q. Excuse me?

A. They had taken the pictures, but I had no contact with them during this period.

Q. As to the actual preparation of the article.

A. None whatever.

Q. Now, in order to get that clear, the actual picture-taking—which we will come back to later on—was on January 31 and February 1, 1955, in Philadelphia; is that correct?

A. Correct.

Q. You were present at the picture-taking, of course?

A. I was.

Q. And when you said that you didn't know about the actual date of the preparation of the article, you were referring to the actual preparation of the article itself, the text, the arrangement of the photographs and the like?

A. Right.

Mr. Garment: With your Honor's permission, I would like to read a brief passage from this interview dated at or about February 5, 1955.

[fol. 109] "'The Desperate Hours' is a manhunt melodrama concerning three escaped convicts who invade a respectable, middle-class household in Indianapolis.

"'I set it in my home town because that is what I know,' he explained. 'And I think that neighborhood is more typical than, say, New York, or Connecticut or California.'

"The Indiana author explained that the idea for the novel came from newspaper accounts of manhunts, not any particular one but several."

Q. You also wrote and there was subsequently published in the Sunday Times for January 31, 1955 an article with relation to the writing of The Desperate Hours; isn't that true?

A. I did write such an article.

Q. And do you recall where you wrote that article?

A. I wrote it in a hotel room in Philadelphia.

Q. In Philadelphia?

A. Yes.

Q. Do you recall when the out-of-town tryouts in Philadelphia started?

A. I couldn't give you exact dates. I think we opened in New Haven around January 5th and I think we opened in Philadelphia about a week later, I would say the 10th or 12th of January.

Q. So that this article with reference to the writing of The Desperate Hours that was subsequently published in the Sunday Times was written by you in Philadelphia sometime between the middle of January and the end of January? Would that be a fair statement?

A. I think that would be fair.

Q. Mr. Hayes, I show you Defendants' Exhibit A in evidence and ask you whether that article entitled "Fiction [fol. 110] out of Fact" is the article that I have just been talking about (handing paper to witness).

A. Yes, it is. I recognize it.

Mr. Medina: Is that "A"?

Mr. Malino: That's a copy—

Mr. Medina: It's Exhibit G, if I am correct.

The Court: It is Exhibit G.

Mr. Garment: Again with your Honor's permission, I would like to read briefly from this article so as to recall this to the jury's memory.

"Fiction out of Fact

"by Joseph Hayes.

"Author of 'The Desperate Hours,' due at the Barrymore February 10th.

"Philadelphia.

"At the moment I am writing this, the newspapers are headlining a story about five guards held hostage in the Massachusetts State Prison. The news accounts concentrate on the action. But what of the more personal stories involved? What are the thoughts and emotions of the guards' waiting relatives?"—and so forth.

"It was out of conjectures such as these that, in the spring of 1953, I sat down to write a novel which, when completed, I called 'The Desperate Hours.'

"The novel—and the play version of it—was based on various news stories. In California, in New York State, in Detroit, in Philadelphia, frightened and dangerous men entered houses, held families captive in their own homes; these were headline stories, soon forgotten. Some ended tragically, others did not. The newspapers soon dropped all reference to them."

[fol. 111] And then follow some other questions addressed to yourself as to why it was written, and then:

"Instead of researching any of the specific 'cases', however, I found it best to let my imagination play with the idea. Meanwhile, I reached into my own background and found a setting, the City of Indianapolis, where I was born, a typical city.

"After that, it was necessary to probe into my own convictions about people, ordinary, down-to-earth, representative people—what did I really feel about them? What did I believe about them and how did they react under stress? Once I could answer that question honestly, I could begin 'research.'

"Technically I needed to make my police activity reasonably authentic"—and so forth, with respect to the police activity.

"And then follows a discussion of the mind of the criminal. This mind became, as I worked, so complex and cun-

ning that, almost automatically, the necessary plot-twists and surprises of story erupted, often to my own astonishment, so that in the end even the plot itself became something quite distinct from all the other hostage stories I had ever encountered."

By Mr. Garment:

Q. That certainly was a fair statement of the facts as you already dsecribed them to us in court.

A. That is correct.

Q. Now, Mr. Hayes, I would like to ask you about the relationship between The Desperate Hours and the Hill incident.

[fol. 112] Of course, you knew about the Hill incident along with these various other captive or hostage incidents that we have talked about?

A. Yes, I did.

Q. As a matter of fact, Mr. Hayes, there were hostage incidents following the Hill incident and prior to the actual writing of The Desperate Hours, were there not?

A. I think there were, but I couldn't answer that exactly.

Q. Do you recall that in the month of December, 1952 in Pennsylvania, the same State of Pennsylvania, a family was held captive by five convicts, I believe, who had escaped from a nearby penitentiary? Does that ring a bell?

A. It doesn't ring a bell; I'm sorry.

Q. When you wrote The Desperate Hours was it your intention to tell the story of the James Hill family or the incident in which that family was involved in September 1952?

A. It was not.

Q. Would you speak up, please?

A. It was not.

Q. Did you make any attempt to depict any member of the Hill family in The Desperate Hours?

A. No, sir, I did not.

Q. Did you make any attempt to depict the Hill home in The Desperate Hours?

A. No, sir, I did not. I did not know the Hill home.

Q. Would you speak up, sir?

A. I did not know the Hill home. I couldn't have done that.

Q. Did you make any attempt to describe any of the physical facts or events surrounding the Hill incident?

A. I made no conscious attempt to do that. What ever came into the work seeped in from this previous knowledge.

Q. And that would have been a matter of seeping in of knowledge from a great number of events—

A. And from the Hill—

[fol. 113] Q. Including among this great number the Hill incident.

A. That is correct.

Q. You say you have no actual recollection that that was even the fact. If it was a fact it was something unconscious.

A. May I say to you that I didn't read these clippings or have them propped up in front of me and pick this fact from this one and this one from that one. I studied them, read them, and then wrote.

Q. I'm sure that that was the case. And so, to complete this line of questioning, Mr. Hayes, it was not your intention and you did not depict any person whatever who was involved in the Hill incident, either the convicts or the members of the family or anyone else involved in the actual Hill incident?

A. No, sir, I did not.

Q. And it was not your intention and in fact you did not depict the words or substance of anything that was said by anybody in the Hill incident?

A. Not consciously.

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Q. Is it a fair statement, Mr. Hayes, that you told anyone who asked you about the writing of The Desperate Hours essentially what you have told the Court and jury this afternoon?

A. That is correct.

Q. Did you ever tell any interviewer or any other person that The Desperate Hours was inspired particularly by the Hill incident?

A. No, I never used that phrase.

Q. Did any publication, to your knowledge, discussing either the play or the motion picture or the novel, state or indicate that you had ever made such a statement?

A. No.

Q. I want to ask you about the name Hilliard. It is a fact, is it not, Mr. Hayes, that a writer, particularly a trained, experienced writer like yourself, is concerned about the names he uses in a fictional work?

A. That is true.

[fol. 114] Q. And in the course of writing, as you say, some nineteen or more plays in collaboration with your wife, Marrijane, both you and Mrs. Hayes have yourselves been concerned about names for characters in your plays and short stories?

A. That is true.

Q. And that is because of a concern on your part of having any confusion or connection of the names selected with real-life persons; isn't that a fact?

A. That's a fact.

• • • • • • •

Q. Isn't it a fact that is known among professional writers and persons in the creative field that when a writer is dealing with any theme, and particularly with a realistic type of theme, such as a hostage theme, that the use of any real-life name would be avoided like the plague?

Mr. Medina: I object to the form of the question.

The Court: I will permit it just so we can move along here.

A. Yes, in general that is true.

Q. Did you have the name Hill in mind when you used the name Hilliard?

A. No, I did not.

Q. Where did you get that name from?

A. In Bradenton, Florida, where I lived at the time of the writing, the leading Chevrolet dealer in that area, Chevrolet and Pontiac, is named Hilliard, and every time I would take my children to a drive-in motion picture we were subjected to what amounted to television commercials in between the features, in which the name Hilliard always featured.

Q. I ask you to look at this Bradenton telephone directory and state whether or not the name of that Chevrolet dealer appears there (handing telephone book to witness). [fol. 115] A. "Hilliard Brothers, Auto Dealers, Garage"—and so forth.

Q. Wouldn't it be fair to say, then, Mr. Hayes, that you didn't even have the Hill incident specifically in mind when you sat down and wrote The Desperate Hours?

A. Well, I would say that I had in mind in the manner that I have described.

Q. I mean consciously, with any clipping in front of you?

A. No, I did not.

Q. Mr. Hayes, we have talked generally about the matter of publicity and the ordinary procedure of a writer collaborating in obtaining publicity for a novel or other work that is being published. Do you recall that testimony?

A. Yes, I do.

Q. As far as the play The Desperate Hours is concerned, in addition to writing the script of the play, it is true, is it not, that you were also a co-producer of the play?

A. That is correct.

Q. And your associate in the production of The Desperate Hours was Mr. Howard Esrkine?

A. Yes.

Q. That gentleman who is sitting in the rear of the courtroom (indicating); is that correct?

A. That is correct.

Q. The play The Desperate Hours was technically produced by a company called The Desperate Hours Company?

A. That is correct.

Q. Which would have been a limited partnership with various persons who had contributed—

A. Sixty-three investors.

Q. Did The Desperate Hours Company hire publicity or press agent representatives?

A. Yes. All producers do.

Q. That would be the usual and common practice in the industry?

A. Correct.

[fol. 116] Q. Who were those press agents or publicity representatives?

A. Marian Byram and Phyllis Perelman.

Q. And in general terms was it their responsibility to arrange for interviews and the publication of articles such as we have been discussing here today?

A. That is correct.

Q. Publicizing the play?

A. That was their function, yes.

Q. And they would also arrange for coverage, if that could be obtained, in magazines?

A. Yes.

Q. Isn't it a fact, Mr. Hayes, that in the theatrical world, coverage by Life magazine is considered very important to the production?

A. Yes, it is.

Q. And wouldn't it be fair to say that coverage of a play in Life magazine would, in a sense, represent the most important type of publicity for the play?

Mr. Medina: I object to the form of the question.

The Court: Overruled.

A. No, I would not say that it was that important.

Q. But you would consider it important?

A. I would consider it important as I would consider coverage by Look magazine or the Saturday Evening Post or any of the others important.

Q. I must ask you to keep your voice up.

A. I am sorry.

Q. I am sorry, Mr. Hayes, but at the end of the sentences you seem to drop your voice.

Was the matter of coverage in Life magazine discussed by you with your publicity representatives and other associates?

A. It was discussed only hopefully, because one doesn't solicit this sort of thing.

[fol. 117] Q. I didn't hear the end of that.

A. One does not solicit this sort of thing any more than one talks to a critic about what he is going to write.

Q. Do you mean that if you are going to get coverage in Life magazine they have to come to you?

A. Well, Life magazine—any magazine of this nature knows exactly what's going on in the theatre world and makes its own decisions as to what it is going to do about it.

Q. Was this discussed with the director of The Desperate Hours also, Mr. Robert Montgomery?

A. Yes.

Q. By the way, was Mr. Montgomery an investor in The Desperate Hours as well as the director of the play?

A. Yes, he was.

Q. Did there come a time when somebody other than your associates connected with the production of The Desperate Hours mentioned coverage of The Desperate Hours play in Life magazine?

A. Yes.

Q. And was that Mr. Bradley Smith?

A. Yes.

Q. Who is Bradley Smith?

A. Bradley Smith is a neighbor of mine in Connecticut. But he is also a free-lance photographer for all sorts of publications, including, I think, Life. But he is not employed by them, that I know of. He simply is a free-lancer.

Q. Did you have a discussion with Mr. Bradley Smith about the possibility of coverage of The Desperate Hours in Life magazine?

A. We had a general discussion full of suggestions by him as to how The Desperate Hours might be covered. But it was a very general discussion and did not go into any detail as to how—not only by Life magazine but various others.

Q. Did Mr. Smith ask you any questions about the staging of The Desperate Hours?

A. Yes, he did.

[fol. 118] Q. By the way, is Mr. Smith quite acquainted with various publicity techniques?

A. He is, indeed. He is a man with a very active mind, very fertile and free with his ideas.

Q. I don't know whether you answered this in response to my other question, but do you know whether Mr. Smith had done photographic work for Life magazine?

A. Yes, he had.

Q. On a free-lance basis?

A. As I understand it. I couldn't verify that.

Q. That is, he was not an employee of Life magazine at the time this discussion took place?

A. As far as I know, he was not.

Q. In your discussion with Mr. Smith were you asked, as part of this discussion about various ways of publicizing the play, whether there had been an incident in Philadelphia?

Mr. Malino: I object to that part of the question that characterizes this as a discussion. We haven't found out yet just what happened here. Where did they meet? What was this all about?

Mr. Garment: I don't mean to place any serious—

The Court: You can go into that on cross-examination.

Mr. Garment: All right; I think I might be able to clear that up.

Mr. Malino: It could be done now.

Q. Mr. Hayes, this meeting that you had with Bradley Smith was on a train riding home to Danbury, Connecticut, from New York?

A. It was a casual meeting on a train, not a business meeting or a set-up of any kind like that.

[fol. 119] Q. And you and Bradley Smith were good friends and neighbors?

A. Correct.

Q. And you talked about other neighbors?

A. We certainly did.

Q. And you talked about the world and other matters?

A. Yes.

Q. The children?

A. Both of us, yes.

Q. And in the course of the discussion you came around to discussing your play The Desperate Hours?

A. That's right.

Q. Did you know at that time that the play was scheduled for an out-of-town tryout in Philadelphia as well as New Haven?

A. My recollection would be that we did, yes.

Q. Did you tell Mr. Smith, Bradley Smith, that you were going to be in Philadelphia before coming to New York with the play?

A. Yes, it was part of the general conversation.

Q. And then with relation to this matter of possible ways of publicizing The Desperate Hours, did Bradley Smith ask you whether there was an incident in Philadelphia?

Mr. Medina: I object to the form of that question. Again he is tying in two or three things at one time and characterizing the conversation. If he wants to ask him whether there was any question as to the incident in Philadelphia, let him go ahead without characterizing the nature of the discussion.

Mr. Garment: I think—I am examining a defendant—

The Court: I am going to overrule the objection—if the witness understands the question and can answer it.

[fol. 120] Do you understand the question?

The Witness: Yes.

Would you read the question back?

(The reporter read the pending question.)

A. Yes, he did.

Q. And did you tell him that there was an incident in Philadelphia?

A. I told him that was one of the incidents, in Philadelphia.

Q. One of the incidents.

A. That's exactly right.

Q. Did Bradley Smith say in words or substance that Life sometimes or frequently liked to cover theatrical events in that way?

A. Yes, he did.

Q. That would be by relation to some true life incident or event?

A. Correct.

Q. And that's about where the matter was left in the course of this very informal conversation with your friend Bradley Smith?

A. That's exactly the way it was left.

Q. Then I imagine followed the hectic business of getting prepared with the play.

A. You chose a very good word.

Q. And as the co-producer and author, I am sure that you were working day and night.

A. Indeed.

Q. And ultimately you were in Philadelphia readying the play for its Broadway opening?

A. That's correct.

Q. Did there come a time when you heard from some representative of Life magazine?

A. Yes, there did.

Q. Do you recall approximately when that was?

A. No, I am sorry, I wouldn't be able to give you a date. It was during the Philadelphia stay.

Q. So that it would have been the early part of January, 1955?

A. Well, not too early, in the sense that we opened in [fol. 121] New Haven, I believe, on the 5th. So it would be midway in January.

Q. Sometime midway in January 1955.

A. Yes.

Q. In what manner did you hear from Life magazine?

A. I received a telephone call.

Q. And from whom was that call?

A. Mr. Tom Prideaux.

Q. And who is Mr. Prideaux?

A. Mr. Prideaux, whom I did not know at that time, introduced himself as the theatrical editor of Life magazine.

Q. And that is Mr. Prideaux who is sitting over on the other side of the courtroom (indicating)?

A. That's correct.

Q. And you say you did not know Mr. Prideaux at that time?

A. I did not.

Q. And he introduced himself as the theatrical editor of Life magazine?

A. Words to that effect.

Q. Did he in words or substance say that Life had an idea for the coverage of The Desperate Hours?

A. Yes, he did.

Q. Did he ask you whether you would cooperate?

A. Yes, he did.

Q. Did you tell him that you would?

A. Naturally, I did.

Q. Did he ask you whether there had been an incident in Philadelphia?

A. Yes, he did.

Q. Did you tell him that there had been an incident?

A. I told him there had been.

Q. Did you tell him the name of the people involved in the incident?

A. I didn't know the name at that time?

Q. Did he ask you to do something at that time?

A. Yes, he did.

Q. What did he ask you to do?

A. He asked me, first, whether we were interested in their [fol. 122] coming down and taking pictures if everything worked out. And I said yes, we were. And then he described to me the idea of taking the actors from our stage out to the site of this incident and photographing scenes from the play in this background, and would I contact the occupant of the house in Philadelphia—at that time I

thought the house was in Philadelphia; I didn't know the situation—would I contact the occupants of the house and find out whether that would be agreeable with them. This I agreed to do.

Q. At that point certainly no one knew who was living in this house.

A. No, we didn't know that. We knew very little.

Q. Did Mr. Prideaux ask you whether The Desperate Hours had been particularly inspired by this incident?

A. No. This did not enter into the conversation.

Q. Did Mr. Prideaux ask you whether The Desperate Hours was the story of the family involved in this incident in Philadelphia?

A. No, he did not.

Q. Did you make an appointment with Mr. Prideaux at that time?

A. The sequence of events thereafter was very confused, but such an appointment was made.

Q. I think perhaps you could speak a little bit slower, Mr. Hayes.

A. I say the sequence of events after that was very confused because of my other work; but such an appointment was made.

Q. I don't want to tax you with this matter of dates too closely, but do you recall whether you went out to check on the house before or after that appointment was made?

A. My recollection is I went out to the house and made the appointment for Mr. Prideaux.

Q. I see. How did you find the house?

A. Well, in the first place, it took some doing. Our general manager on the show was familiar with Philadelphia—[fol. 123] Q. That would be Sam Handelsman?

A. Yes. So the natural person to ask was him. He found out the house was in Whitemarsh. We drove out to Whitemarsh still without any other knowledge, went to the police, told them of the situation, and the policeman actually escorted us to the house.

Q. Did you ask the policeman or did you learn from the police—in Whitemarsh I assume—whether the family that had been involved in the incident was still there?

A. I learned that from him because he volunteered that information.

Q. He told you that they were no longer there?

A. That's right.

Q. Do you know how Mr. Handelsman located the house?

A. I think he located the area through the newspapers or through a friend of his who went to the newspapers. I don't know for sure.

Q. When you got out to the house, did you find the residents of the house there?

A. Yes, I did. My recollection is one lady was there.

Q. Was that Mrs. Stahlheber?

A. It turned out to be Mrs. Stahlheber.

Q. Did you tell Mrs. Stahlheber something about the purpose of your call at that point?

A. Yes, naturally.

Q. Did you tell Mrs. Stahlheber something that you had been asked by Mr. Prideaux to tell her?

A. Yes.

Q. What was that?

A. I told her that Life magazine was interested in using the house for a picture story and would she be willing to talk it over with them.

Q. Did you explain who you were?

A. Oh, yes.

Q. Did you tell her that there was a play that was then running or would be running in Philadelphia?

A. Yes, I did.

[fol. 124] Q. Did you explain to her that there had been an incident of a family that had been held by some convicts in the house?

A. Yes, I did—to her surprise.

Q. Did she know that that had taken place?

A. No, she did not.

Q. Did she consent to the use of her house for this photographic work?

A. She didn't consent to me. She consented to talk with Mr. Prideaux when he came out, because actually I had no reason to ask her to do this when Mr. Prideaux hadn't even decided at that time that he was actually going to do it, and, also, other elements entered in relative to my own feeling about the house and what-not.

Q. I wonder if you could explain to the jury what you mean by that.

A. Yes, I will. My concern from the beginning, when this whole thing was suggested, was that perhaps this house would not accurately depict or reflect the set and the general background of our play.

Q. You mean The Desperate Hours play?

A. Yes. And I wanted to make sure that these two coincided sufficiently in their suggestion so that the resulting story would truly reflect our play.

Q. Did Mrs. Stahlheber ask or did you tell her what this article was going to be about?

A. No, I did not.

Q. I suppose the fact of the matter is that you had no knowledge at that point of what it was going to be about.

A. No, I did not.

Q. After you saw Mrs. Stahlheber at the house, you called Mr. Prideaux and told him that an appointment had been made?

A. I notified him. Whether I called him, telegraphed him or had someone else phone him, I couldn't say.

[fol. 125] Q. And do you recall the date when Mr. Prideaux came down to Philadelphia?

A. No, I am sorry, I don't know the exact date.

Q. Would it be on or about January 17th?

A. Yes, it would.

Q. 1955?

A. Yes.

Q. Where did you meet Mr. Prideaux?

A. Mr. Prideaux came to my hotel, as I recall it, and I met him and the young lady who accompanied him, in the lobby, with my wife and with Mr. Erskine. That's my recollection. Whether there were others there, I don't know.

Q. By the way, Mr. Hayes, did Robert Montgomery ever tell you that he had had a discussion with Mr. Prideaux about the coverage of The Desperate Hours in Life Magazine?

A. Mr. Montgomery mentioned—

Q. I wonder if you could simply answer that question yes or no.

A. Yes.

Q. When did he mention that to you?

A. That's where it becomes vague. Sometime during the production he mentioned that, because of the unusual set we had, Life magazine might be interested. It was as general as that.

Q. Because of the unusual set?

A. That's right.

Q. That would have been the double-decker set that you had for The Desperate Hours?

A. That's right. And when we rehearsed we had a mock-up of it so that the entire rehearsals were in an open frame showing two stories, and this was a very interesting theatrical idea.

Q. That would have been a cross-section of the besieged house; is that right?

A. That's right.

Q. In any event, you met Mr. Prideaux on January 17, 1955 for the first time?

A. I assume that date, yes.

[fol. 126] Q. Do you recall what time of the day that was? Was it, roughly, in the morning, the afternoon, or the evening?

A. My recollection is that it was late afternoon.

Q. Had you made arrangements or did you then make arrangements for transportation out to the former Hill home in Whitemarsh?

A. There was a car provided by a friend of our general manager's and my recollection is that she drove us out there that day.

Q. Did anybody accompany Mr. Prideaux on his visit?

A. Yes. There was a young lady with him.

Q. For the sake of the record, Mr. Hayes, let me just finish the question.

A. I am sorry.

Q. A young lady had accompanied him down from New York?

A. I beg your pardon.

Q. I say some member of his staff had accompanied him down from New York?

A. Correct.

Q. Do you recall what her name was?

A. No, I don't.

Q. Would the name Laura Ecker refresh your recollection?

A. Yes, that name is familiar to me as one of the two young ladies involved here.

Q. At a subsequent date there was another young lady who came down?

A. That's right.

Q. Did Mr. Prideaux indicate to you what Miss Ecker's function was?

A. I don't remember.

Q. Did he say that she was a researcher or reporter for Life magazine?

A. I don't believe he did, but I just don't recall.

Q. In any event, you knew that Miss Ecker was associated with Mr. Prideaux.

A. Of course.

Q. Did all of you then go out to the house together in one car?

A. Yes, we did.

Q. Was there any discussion about the real life incident on the way out to the house?

A. No, not to my recollection.

[fol. 127] Q. Did you at that time, as a matter of fact, recall any details of the actual real life incident?

A. No, I wouldn't know the details.

Q. You ultimately arrived at the house and Mrs. Stahlheber was there pursuant to the arrangements that had been previously made; is that correct?

A. Correct.

Q. Did you or Mr. Prideaux speak to Mrs. Stahlheber?

A. I introduced Mr. Prideaux to Mrs. Stahlheber. Then they held their discussion.

Q. Do you know what Mr. Prideaux said to Mrs. Stahlheber?

A. No, I don't.

Q. Do you know in general terms whether he explained the purpose of the call?

A. Yes, I am sure he did.

Q. And, in general terms, that Life was considering the possibility of doing an article which would involve photography in this house?

A. Yes.

Q. But beyond that did Mr. Prideaux go into any details as to what the article was going to be about?

A. No.

Q. Was an arrangement then made between Mr. Prideaux and the occupant of the house, Mrs. Stahlheber, for the use of the house in connection with photographic work for Life coverage of The Desperate Hours, if Life ultimately decided to do the article?

A. With that "if," yes.

Q. And did Mr. Prideaux state or indicate to you that the ultimate decision as to whether or not an article would be done by Life magazine would depend upon his consultation with other persons at Life magazine?

A. He did not enter into any conversation with me relative to his procedure at Life magazine, no, sir.

Q. Would you tell us in general terms, and briefly, Mr. Hayes, what happened at the house, that is, what you did there?

A. At the house, first they held this conversation, [fol. 128] went inside, my father was there, he had been ill, and he and I, I remember, walked around the grounds while this went on. Ultimately I went into the house and walked through it with Mr. Prideaux, both of us looking at the areas that might in some way correspond to similar areas on the stage and in the stage set.

Q. Did you and Mr. Prideaux reach agreement that the house was suitable for use in relation to the play?

A. My recollection is that Mr. Prideaux did not commit himself in any way. I said that the house from our point of view would represent our play.

Q. That is, it would be physically consistent with your play?

A. Correct.

Q. Did Mr. Prideaux make some arrangements with Mrs. Stahlheber whereby she would be paid for the use of the house?

A. I don't know that.

Q. As you have just described it, would that be a fair summary of what transpired at the house?

A. Yes, sir, it would.

Q. Did you then return to Philadelphia proper?

A. We did.

Q. That evening did Mr. Prideaux see The Desperate Hours?

A. Yes, he did.

Q. And then did he and Miss Ecker leave for New York?

A. Yes.

Q. By the way, do you recall whether Miss Ecker asked you any questions or whether you made any statements to Miss Ecker about the relationship between the real life incident and writing of The Desperate Hours?

A. I do not.

Mr. Malino: You mean you don't recall it, or there were no such statements?

The Witness: I don't recall it.

[fol. 129] Q. Did Mr. Prideaux or his associate, Miss Ecker, ask you for any research materials relating to the actual incident?

A. No, sir, they did not.

Q. Did they ask you for any news clippings?

A. No, they did not.

Q. Did they ask you anything at all about the Hill incident?

A. No, not as I recall.

Q. And, as you indicated before, you told them nothing?

A. We were not concerned so much with the Hill incident as we were with the practicalities of setting up the proper shots representing the play. We had practical considerations, no time for contemplation of such things as this. It didn't even concern us at the time.

Q. Well, Mr. Hayes, what did you understand was going to be the nature of this article about The Desperate Hours that would appear in Life or might appear in Life Magazine in which a real house was going to be used?

• • • • • • •

A. My impression was that here was an opportunity to create a news story—

Q. To create a news story?

A. To create a news story in that—

The Court: New or news?

The Witness: News.

The Court: N-e-w-s?

The Witness: Yes.

Q. To create a news story?

A. A news story—in an unusual manner by having actors in a play concerning certain events moved into a setting in which similar events had occurred.

[fol. 130] Q. Similar events. You mean where a family had been held hostage?

A. Yes.

Q. Pure and simple?

A. Yes.

Q. Nothing beyond that?

A. That's right.

Q. Did you ask Mr. Prideux whether he proposed to use, if he ran this article, the name of the family that lived in the house at the time of the incident?

A. I wouldn't presume to do that.

Q. Did it seem to you that there was no occasion to discuss that matter?

A. That's correct. I did not see it that way.

Q. Mr. Hayes, let me ask you this. Did the thought enter your mind that the name of the real-life family would very likely be used in connection with any article about The Desperate Hours utilizing this real-life house?

A. No, sir, I don't think it entered my mind one way or the other.

Q. Did Mr. Prideaux indicate to you before he left for New York whether Life would cover The Desperate Hours?

A. No, sir. As far as I recall, he did not. I would not approach him and ask him such a question.

Q. Was there any discussion at that time about the financial arrangements for the actual costs of photographing the proposed article in Life Magazine?

A. I would have to give you a rather complex answer. There was such a discussion.

Q. Give me the best answer you can. Was it on this occasion, January 17th?

A. Yes, I believe it was. But there had to be a discussion relative to the payment of stagehands because of union regulations when a photograph call is held in the theatre. So there had to have been a discussion.

Q. Now, it is Life's standard procedure, is it not, to pay certain expenses in relation to the coverage of a theatrical [fol. 131] event and to require the producer of the play which is being covered to pay certain others?

Mr. Medina: I objected to the form of the question.

The Court: If this witness can answer as to what is Life's procedure, I will permit it.

Mr. Garment: If it is known generally.

The Court: He is not the best one to testify on it. Do you know what this procedure is?

The Witness: I can testify to what the general procedure in the theatre relative to producers is.

The Court: You mentioned specifically Life Magazine. Read the question.

(The reporter read the pending question.)

The Court: Do you know?

The Witness: The answer is yes.

Q. That is very well known, isn't it, Mr. Hayes?

A. It's generally accepted.

Q. And the expenses that Life Magazine pays generally covers transportation and, of course, the photography of the article as well as its own production and printing expenses, while the producer pays the theatrical expense. Is that correct?

A. That is correct.

And some producers use the same night. We always have to take pictures on our own, of shows, so we, on that, use the same night that the magazine is going to cover it and dovetail those expenses that we have to absorb.

Q. I understand. The point is this, Mr. Hayes: that the producer of the play pays for the overtime charges of stage-

[fol. 132] hands that may be required for overtime shooting of photographs by Life Magazine?

A. That is the extent that the producer is involved in the expense, yes.

Q. Well, that was the extent that you were involved?

A. That is correct.

* * * * * * *

Q. In the case of this particular photo article that appeared in Life Magazine, apart from the efforts, of course, that you and your associates made from a physical standpoint in setting up the shooting you incurred the expenses of overtime shooting,—one night in Philadelphia, is that right?

A. That's right, the stagehands.

Q. There came a time when there were photographs taken in New York as well. I don't know whether you were there.

A. I knew there was, but I am sorry, I just don't have any knowledge about this.

Q. You don't recall whether there were—let me put the question to you this way. Those photographs would also have been taken after hours, would they not?

A. Well, when we were running, not rehearsing, during the day, I just don't know.

• • • • • • •

Q. When did you next hear from Life Magazine about this possible coverage in Life Magazine?

A. When next after Mr. Prideaux left Philadelphia for the first time?

Q. Yes.

A. I wouldn't be able to give you an accurate answer; sometime in the next week.

Q. Do you recall whether you personally heard from Mr. Prideaux?

A. I don't recall.

Q. In other words, in some fashion, either by a call from your press representatives in New York or a direct call from Life Magazine, you were advised that they pro- [fol. 133] posed to cover the play in this true-life fashion; is that right?

A. In some manner we had to set up dates that were agreeable to both sides.

Mr. Malino: I don't like his bringing into this question the press representatives. That is the first time we hear about them.

Did you hear that part of the question, Mr. Hayes?

The Witness: I heard it.

I don't know what the procedure was, really.

By Mr. Garment:

Q. It may have been either from your publicity representatives in New York or by a direct call from Life Magazine to you that you learned that Life proposed to do the article and wanted to make arrangements for another visit by certain of its representatives to determine what kind of photographs would be taken; isn't that correct?

Mr. Medina: I object to the form of the question as being in the alternative.

The Court: He has already answered that once. He said he did hear from somebody.

Mr. Medina: As long as he says he heard from somebody and we leave it that way, fine.

Q. All right, Mr. Hayes, you heard from somebody.

A. That's all I can tell you.

Q. There came a time when some other people from Life Magazine, other than Miss Ecker and Mr. Prideaux, came down to Philadelphia; is that right?

A. Correct.

Q. Who was it who came down this next time?

A. A photographer named Cornell Capa, and another young lady accompanied him.

[fol. 134] Q. Was that Miss Addison or Miss Shevlin?

A. Yes, that sounds more familiar, Shevlin.

Q. Virginia Shevlin. I believe that's the name.

A. I think so.

Q. When did she come down?

A. They came down in the afternoon or early evening of January 31st, I guess.

Q. Let me ask you this. You are about to refer to the date when she came down for photographic work.

A. Yes, I am.

Q. Wasn't there an occasion before that when the photographer and Miss Shevlin came down to see the play?

A. Yes. I don't think I saw them at that time.

Q. I see. Did you learn that they were there?

A. Yes. I think that's the reason I didn't think of it.

Q. In any event, on January 31st Mr. Capa and Miss Shevlin came down to Philadelphia to do the photographic work?

A. Correct.

Q. When was the photographic work done in the theatre?

A. The night of January 31st, as I recall. By night I mean after the performance.

Q. Do you recall whether Miss Shevlin and Mr. Capa had with them a shooting script at that time of photographs that they were to take?

A. I don't know what they worked from; I'm sorry.

Q. When did the shooting of photographs take place out at the house?

A. The following day.

Q. Who went out to the house the next day?

A. Those actors selected by Mr. Capa to go out to the house, myself, three or four other people—I don't know everyone who went.

Q. Did Life make the arrangements for the transportation of all these people?

A. Yes, all that was arranged and taken care of.

[fol. 135] Q. And the equipment out to the house?

A. Yes.

Q. Was there any discussion among yourself and Mr. Capa and Miss Shevlin as to the relationship between The Desperate Hours and this former incident that took place in the house?

A. No, there was not. Our discussion was limited to setting up the pictures in the proper way.

Q. Do you recall how long the photographic work at the house took on February 1st?

A. No. I think I left before the work was all over. I don't know how long they were out there over-all.

Q. But, in any event, a great number of photographs were taken?

A. Yes, that is true.

Q. At different places in the house and outside of the house?

A. Correct.

Q. Did you see Miss Shevlin and Mr. Capa before they went back to New York?

A. I don't recall whether I saw them after they left the house. I don't know.

Q. Was that the last contact that you personally had with the preparation of the Life article?

A. It was the last except for a note which I wrote from the hotel to Mr. Prideaux in the intervening time.

Q. I show you a photograph of a letter on the stationery of the Warwick Hotel, addressed to Mr. Tom Prideaux and signed "Joseph Hayes," and ask you whether that is the letter that you referred to (handing paper to witness).

A. Yes, it is.

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(Photostat of letter from Mr. Hayes to Mr. Prideaux, dated February 3, 1955, received in evidence as Plaintiffs' Exhibit 18.)

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[fol. 136] April 10, 1962.

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

JOSEPH HAYES, a witness for the plaintiff, resumed the stand and, still being under oath, testified further as follows:

Mr. Garment: Your Honor, at the close of business yesterday, I had placed in evidence a letter dated February 3, 1955 that was written by Mr. Hayes to Mr. Prideaux of Life Magazine. With your permission, I would like to read this letter.

"Mr. Tom Prideaux:
"Life Magazine
"New York, N. Y.

"Dear Tom Prideaux:

"It was a pleasure meeting you and we all enjoyed the pleasant and cooperative way that Miss Shevlin and Cornell Capa worked with us. I hope you get a great story.

"I am writing really to ask a sort of personal favor. There is such a lot of violence in the play that I am sure the

photos will be dramatic. But the play is not totally one of violence, and I am hoping that you will be able to suggest this contrast in the various moods in the total story. I am saying this with no desire whatever to dictate or influence your editorial policy, but only expressing a personal feeling that the play has also tenderness, warmth, and so forth, and that to present a full picture of it these elements should also be suggested. I am sure this is all very obvious and that you will agree.

[fol. 137] "I have just become aware fully of the new Equity rulings regarding use of actors who are photographed and also the credit line situation as dictated by Equity. I gather that this is a new ruling, and I am wondering if you and staff are fully aware of it, as I was not. Anyway, I would much appreciate your giving this your full consideration.

"Again thanks for a fine job and all best wishes, sincerely yours, Joseph Hayes."

Direct examination.

By Mr. Garment (Continued):

Q. Did you receive a reply from Mr. Prideaux?

A. Not that I recall.

Q. What was the next thing that happened in relation to the Life article so far as you were concerned?

A. Where are we exactly? We have been shot?

Q. February 3, 1955.

A. Well, the next thing was when it appeared on the stands.

The Court: Appeared where?

The Witness: On the stands.

Q. In the interim between February 3rd and February 28th you did not hear from anyone connected with Life Magazine?

A. That is right.

Q. And you did not contact anyone at Life Magazine?

A. That is correct.

Q. Very briefly, Mr. Hayes, would you tell the jury whether or not The Desperate Hours is the story of or a reenactment of the Hill episode?

A. It is not a story of and it is not a reenactment of that episode.

Q. Did anybody from Life Magazine ever ask you whether it was.

A. No, they did not.

[fol. 138] Q. Did you ever tell anyone from Life Magazine that it was?

A. I did not.

Q. Now, there has been a lot of talk in this case so far about similarities. Did anybody from Life Magazine in the course of any of the meetings you had with them discuss similarities between The Desperate Hours and the Hill incident with you?

A. No, sir. That subject did not come up.

Q. And you never told anyone of Life Magazine about any similarities?

A. I did not.

Q. Did anyone from Life Magazine ever ask you whether or not The Desperate Hours specifically was inspired by the Hill incident.

* * * * * * *

A. I don't believe that the word inspired came up in our discussion.

Q. At all.

A. No.

Q. Now, Mr. Hayes, yesterday you said that in going out to the Hill house, the former Hill house, your basic concern was that the house physically would be consistent with the house or home involved in your play. Is that correct?

A. That's correct.

Q. And isn't it a fact that if the Life article were to be photographed in any other hostage home, so long as that

hostage home were physically consistent with The Desperate Hours that would have been agreeable to you?

Mr. Medina: I object to the form of the question.

The Court: If he understands it, I will permit him to answer it.

A. From my point of view, that's true.

[fol. 139] Mr. Garment: That's all I have.

The Court: You may cross-examine, Mr. Malino.

Cross examination.

By Mr. Malino:

Q. Was the Life article of February 28, 1955 an advertisement of your play The Desperate Hours?

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A. It was in no way an advertisement.

Q. Did you solicit it?

A. I did not.

Q. Did you pay for it?

A. I did not.

Q. Did you have anything to do with the contents of it?

A. I did not.

Q. All that you did was to allow the actors to be transported to the house and have the Life people take pictures there?

A. That is correct.

Q. And to have the Life people take pictures of scenes from your play at the theater?

A. That's correct.

Q. Is that what is known as a photo call or a picture call?

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A. It's known as a picture call when we have it in the theater at night. And we did have such a call, not only to accommodate Life but we also took our own pictures at the

same time so that whatever small expense was involved would be to our advantage from our point of view as distinct from Life.

Q. Did you have any expense?

A. There was an expense of stagehands.

Q. How much was that?

A. Not more than $150.

Q. Did you ever use the Life article in any way in your advertising or publicity?

A. No, sir, I did not.

[fol. 140] Q. Did you quote from it?

A. I did not.

Q. Did you refer to it?

A. In no way.

Q. You did have advertising, though, and publicity, did you not?

A. Yes, we did.

Q. There came a time that you had printed a souvenir program; is that correct?

A. That is correct.

Q. I show you this booklet and ask you if that's the souvenir program.

A. That's right.

Q. Do you know about when that was printed?

A. This must have come out somewhere within a month and a half or two months after we opened.

Q. So it would be around the beginning of April, would you say?

A. I would say at the end of March or the beginning of April.

Q. After the Life article?

A. After the Life article, yes.

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(The souvenir program referred to was received in evidence as Defendant Hayes Exhibit I.)

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Q. In this program there was reprinted your statement that appeared in the New York Times on January 30, 1955?

A. That's correct.

Mr. Malino: Which is in evidence as Defendant's Exhibit G.

Q. And there were photographs of the actors?

A. Of the actors and the stage.

Q. And scenes from the play?

A. Yes.

Q. Were any of these photographs copies of the photographs taken by Life?

A. No. These were our own photographs.

[fol. 141] Q. And then you also had excerpts from reviews of the play?

A. Yes.

Q. How Many?

A. There were eight quotes here.

Q. Any of them from Life Magazine?

A. No, I'm sure there were none.

Q. You gave a number of interviews to newspapers and magazines, I presume. I think you testified to that.

A. Yes, I did testify to that.

Q. That was before the play was created, as a matter of fact, wasn't it—in some cases?

A. Yes, in many instances it was.

Q. And in many instances, after the play was written?

A. That's correct.

Q. In any of those interviews did you ever use or mention that name James Hill?

A. Never.

Q. Or Elizabeth Selfridge Hill?

A. No.

Q. Or the Hill family?

A. Never.

Q. Or Hill?

A. Never.

Q. You were asked by Mr. Garment about your letter to Mr. Prideaux, which is Plaintiffs' Exhibit 18. And you said you never got a reply.

A. No, I don't believe I did.

Q. Did you ever get any acknowledgment?

A. Not that I know of. I just couldn't recall that at the time I did.

Q. Did you ever get any compliance with the letter in so far as it related to the way in which you wanted your play discussed?

A. Well, I would say reluctantly that the Life piece did emphasize the violence and it was my strong feeling early in the game that the emphasis on the violence would hurt us, and such suspicion was borne out in the failure of the play. It frightened people too much.

Q. Sometimes—I don't know if it was your practice as a theatrical producer—but it is the practice, is it not, of theatrical people to blow up an advertisement or a favorable [fol. 142] review or article and put it in front of the theatre?

A. Yes, that often happens.

Q. Did you do that with the Life article?

A. No, I did not.

Q. Did you know that Life would insert an article about your play at the time they took the pictures?

A. Well, I wasn't certain that they would.

Q. Did you know whether they would do it?

A. No, I had no idea.

Q. You said you found it out when you saw it at the newsstands. That's what you testified to before; is that correct?

A. That's correct.

Q. The article speaks for itself, but did it mention the name of the theatre in which the play was being shown?

A. I am sure it didn't.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. You testified previously in this action, didn't you, Mr. Hayes?

A. Yes, I have.

Q. And your deposition was taken on July 30, 1957, wasn't it?

A. That's correct.

Q. And your testimony then was consistent with the way you testified yesterday and today, wasn't it?

A. I think so, yes, sir.

Q. I show you Plaintiffs' Exhibit 10 and call your attention to the headline "True Crime Inspires Tense Play." Is that correct or incorrect?

A. I would have to say that that is certainly correct, that true crime did inspire my play.

Q. You used the expression "triggered" yesterday. What was it that triggered your novel?

The Court: Triggered your what?

Mr. Medina: "Your novel."

[fol. 143] A. Well, I testified in a very complex manner yesterday as to how a book is written, and if you will bear with me I will try to be equally complex in my answer now.

All of the elements that entered in yesterday were certainly a very important part of the creation of this story. Now, while I was writing this story, as I said, I did not have before me all of the slips and all of this information. I did have in mind various cases in a rough sort of memory way. I wrote the book. Now, since this action has been commenced, I have gone back and attention has been called to the various articles on the James Hill case in Philadelphia, which I had never seen. There are, of course, many similarities—

Mr. Garment: I object to this now. We are talking about what triggered him and not about a comparison of similari-

ties that he didn't see at the time of the writing of his novel.

The Court: I am going to sustain the objection.

In other words, just explain what you meant when you used the term "triggered."

A. (Continuing) I would think that this crime coming at this time, without my being completely aware of it, certainly triggered the writing of the book.

Q. I show you Exhibit B for identification, which is the New York Times for September 13, 1952, and call your attention to the article at the bottom of page 1.

Q. You had seen that article at or about the time it came out, had you not?

A. Yes, sir, I had.

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(The two photostats of pages of the New York Times for September 13, 1952, previously marked as Defendants' [fol. 144] Exhibit B for identification were now received in evidence as Defendants' Exhibit B.)

Mr. Medina: With your Honor's permission this is the New York Times of September 13, 1952 and the article starts at the bottom of the front page and runs over to the second page with a photograph taken of some of the children.

The headline is: "Three Escaped Convicts Seize Family, Hold Home 19 Hours to Elude Hunt.

"Hamburg, Pennsylvania, September 12th. The police mobilized Pennsylvania's biggest manhunt in years today against three shotgun-toting jail breakers who held a family captive in its home for 19 hours, then sped 65 miles to rob a roadside diner and a little later raced past a police roadblock on the main highway to New York. Hundreds of state and local officers and a hoard of agents of the Federal Bureau of Investigation joined in the search. They were cautioned by F. B. I. circulars that the convicted bank robbers were 'desperate and vicious.' The hunted men were

carrying shotguns and seven boxes of ammunition stolen from a sporting goods store in West Reading, Pennsylvania 24 hours after they had fled the Federal Penitentiary at Lewisburg in the foggy pre-dawn hours of Wednesday. In the next 48 hours of freedom they ranged 120 miles east, almost to Philadelphia, stole at least three cars and stabbed a private duty policeman who they feared had become suspicious.

"The police working on the case said it was not unlikely that the trio had decided to hole up again possibly [fol. 145] by capturing another family and taking refuge in its home. The fugitives are two brothers from Harlan County, Kentucky, Joseph Wayne Nolen, 26 years old, and Ballard French Nolen, 22, and Elmer Schuer, 21, of Chicago. The Nolen brothers were serving 25-year terms for a bank robbery in Cincinnati, in 1950. Schuer, a slender young man who had the word lucky tattooed over a horseshoe on his right arm and the motto 'Death or glory' over a dagger on his left arm, was serving 13 years for the 1950 robbery of a Chicago bank.

"The most sensational of the fugitives' escapades came together at about 5:00 A. M. Two men with shotguns walked into the Donald Heckman Diner on Route 22 in this quiet borough 35 miles north of Harrisburg. They lined up two employees and four patrons, scooped $135 from the cash drawer and about $105 more from the customers' wallets and quietly walked away, warning the six to lie on the floor. A third man was waiting in the getaway car which raced northeast toward Allentown on the main Harrisburg-New York route.

"45 minutes later the police, manning a roadblock near Allentown, saw a two-tone Pontiac sedan pass by and the search swung north to that area. Hours later James J. Hill, the sales manager of a hosiery plant at Lansdale, near Philadelphia, walked to a neighbor's home and telephoned the police that he, his wife and five children had been held captive by the fugitives at gunpoint for 19 hours in their home.

"Mr. Hill, who lives in the well-to-do Whitemarsh suburban area just north of Philadelphia, said the men had ap-
[fol. 146] peared at his home early today, had marched in and had told Mrs. Hill, alone at the time with three young sons, that they would not be hurt if no effort was made to inform the police. They were hungry, the men said and they needed rest. Through the day they took turns, two sleeping while the third stood guard. They ate several meals.

"As Mr. Hill and his two daughters returned from school and work, they, like the rest of the family were held prisoner. The fugitives were 'perfect gentlemen,' Mrs. Hill told the police. 'They even apologized for interrupting the conversation,' she said, and they seemed to amuse themselves by pointing shotguns at pictures on the wall and telling the boys, one 11 and the four-year old twins, that they wanted to 'improve their aim.'

"Awakened at 3:30 a.m. Last night the Hill family went to a single room. At 3:30 a.m. they were aroused by the fugitives, who said they were leaving. They added that they had ripped out the telephone wires and warned Mr. Hill not to notify the police before 8 o'clock. He complied. He said none of his family had been harmed during the ordeal. The fugitives took some of Mr. Hill's clothing and his car, a two-tone Pontiac sedan similar to the one that brushed by the Route 22 road block later after the robbery at the diner.

"The jail break Wednesday was the first at the Lewisburg Penitentiary in sixteen years. The three men climbed a thirty-foot wall by improvising ladders. A little later they stabbed a campus guard, Raymond Duir, at nearby Bucknell University, when he refused to drive them away in his
[fol. 147] car. He was not injured seriously. Then the trio captured a salesman at the point of a knife, forced him to drive to a sporting goods store they intended to rob, then sped away in the car when the salesman ran away from them. That car was later found abandoned in Harrisburg. Another car was stolen there and it was recovered today in Hamburg after the diner robbery."

And then this photograph with the caption "Pennsylvania family held captive nineteen hours by convicts."

It shows a photograph, I assume, of the Hill home with the children and it says, "Four children of Mr. and Mrs. James J. Hill on lawn of their home in a Philadelphia suburb after they and the three other members of the family were held prisoners. The convicts got away from the Federal Prison at Lewisburg on Wednesday and hid in the house until early Friday, taking turns sleeping while one guarded the family."

By Mr. Medina:

Q. You will note that it says that the convicts left at 3:30 in the morning, Mr. Hayes; and if you subtract nineteen hours from 3:00 in the morning you reach the conclusion that they arrived at 8:30 in the morning, do you not?

A. Correct.

Q. Back in December 1946 in a Woman's Home Companion article that you wrote, in that article the son was not actually held hostage, was he?

A. No, sir; the hero believed he was all the way through the story, and so did the audience—until the end.

Q. But thereafter you were on the lookout for clippings concerning hostage stories?

A. Yes, I was.

[fol. 148] Q. And you were aware, amongst other things, of the Snyder case in New York, which took place in June 1952, were you not?

A. Well, I am aware of it by name now. I wasn't at the time.

Q. I show you this paper. See if it will refresh your recollection that that took place on June 11, 1952 (handing paper to witness).

A. That's right.

Q. And the Snyder case was the case of a single convict who held a woman and her daughter prisoner or hostage; is that correct?

A. That is correct.

Q. And the daughter was killed?

A. That is correct.

Q. At that time you lived in Danbury, Connecticut?

A. In a town called Brookfield. It's just north of Danbury.

Q. And were you aware that the Hill family moved to Old Greenwich, Connecticut on November 24, 1952?

A. No, sir, I was not.

Q. In any event, in December 1952 you went down to Florida because of the illness of your child?

A. That's correct.

Q. And you wrote The Desperate Hours novel in Florida?

A. That is correct.

Q. Except for what occurred in that house, is there anything in the novel that did not come from the New York Times article of September 13, 1952?

Mr. Garment: Except for what occurred in the house?

Mr. Medina: Yes, sir.

A. Are you asking me—I want this clear—

The Court: If the question isn't clear, you may ask to have it cleared.

The Witness: That's what I would like.

[fol. 149] A. (continuing) Would you clear up the question? I don't quite understand. Except what happened in the house in my book?

Q. Yes, sir.

The Court: Let me hear the question.

The Witness: I would like to hear it, too.

(The reporter read the pending question.)

The Court: When you say in the house, do you mean in the Hill house or in the house in the play?

Mr. Medina: Both houses.

Mr. Malino: I object to that on the ground that there is no basis that has been laid that Mr. Hayes knew what happened in the Hill house other than what was in the Times article.

The Court: Objection sustained.

I think the question should be rephrased.

By Mr. Medina:

Q. The play opens with a scene with state and local police and FBI agents working on the case, does it not?

A. Well, except the FBI has not come into yet.

Q. But the FBI comes in very soon thereafter?

A. That's right.

Q. And the New York Times article opens up with the statement that local and state police and FBI agents are working on the case, does it not?

A. That is true.

Q. And the location was a suburban home and the time was in the fall, was it not?

A. That's correct.

Q. And the same was true of the Hill case, was it not?

A. Yes.

[fol. 150] Q. And the father and mother were in their forties in your novel, were they not?

A. That would be true.

Q. And, likewise, the Hills were in their forties?

A. True.

Q. And there was a late 'teen-age daughter in your story, was there not?

A. Yes, sir, there was.

Q. And there was a late 'teen-age daughter in the Hill family, was there not?

A. I didn't know that. I wasn't aware of that at the time. Apparently there was.

Q. Well, there was a picture of a late 'teen-age daughter right in the New York Times, on page 32, was there not?

A. That is true. There are also four other children in that picture.

Q. You had an 11-year-old boy in your play, didn't you?

A. That's correct.

Q. And the Hill family had an 11-year-old boy, did they not?

A. If you say so—

Mr. Garment: Wait a minute. One or the other is ten years old.

The Witness: I beg your pardon?

Mr. Garment: How old is the boy in the play?

The Witness: I don't remember.

Mr. Garment: Mr. Medina made a careful study of this. You represent that the age of the boy in the play is 11 years old?

Mr. Medina: He was ten in the play and eleven in the Hill family.

By Mr. Medina:

Q. Do we agree on that?

A. If you tell me about the Hill family I will agree on the play.

[fol. 151] Mr. Garment: That isn't what he said at first. Let the record show that.

The Court: At any rate the question is now he was ten in the play and eleven in the Hill family.

Is that correct?

The Witness: That is probably correct, but I don't know what he was in the Hill family—at that point.

Q. Don't you remember the newspaper article said the boy was eleven?

A. I don't remember at this point. I will take your word that the boy was eleven.

Q. But you didn't have the four-year-old twins in your play, did you?

A. No, sir.

Q. And you had three convicts in your play, didn't you?

A. That is correct.

Q. There were three convicts in the Hill incident?

A. Correct.

Q. Two of the convicts were brothers in your play?

A. Very true.

Q. And two were brothers in the Hill incident?

A. Very true.

Q. And the name of the family in your play was Hilliard, was it not?

A. It was.

Q. Your play opens up at 8:30 A. M. on a fall morning, does it not?

A. Yes, it does.

* * * * * * *

Q. And in your play, the convicts captured the father and the daughter when they returned from work, did they not?

A. That is correct.

Q. And the same was true of the Hill family incident, was it not?

A. Yes, sir.

[fol. 152] Q. And the family was not harmed either in the Hill incident or in your play; is that not correct?

A. They were not harmed.

Q. Do you know of any other actual incident in the slightest degree resembling The Desperate Hours other than the hostage theme?

* * * * * * *

A. Other than the hostage theme certainly there are other cases. We discussed this at length yesterday—various other cases that involved captive homes. The hostage theme was part of the book and was not part of the Hill family. The hostage theme was in other cases. I can't answer this yes or no. I don't quite understand the question.

* * * * * * *

The Court: I am afraid I don't understand the question either. Perhaps you ought to rephrase it, Mr. Medina.

Q. I thought you told us yesterday that there were numerous and many other hostage, actual hostage incidents that you knew about.

A. I tried, Mr. Medina, to make clear that there is a distinction between prisoner and hostage, and this is the reason I am confused by this. If this is based on my distinction I made yesterday, then I am confused by the question.

Q. You weren't confused yesterday when you talked about numerous hostage incidents, were you?

A. I do not consider the Hill incident a hostage incident, and that's the reason we are in trouble here. It's a matter of semantics. If we can clear it up I am sure we will—

Q. Do you remember that Mr. Garment asked you about numerous other instances which you read about in the newspapers?

A. Yes.

[fol. 153] Q. What kind of incidents were those?

A. We went over those yesterday. There was one in California—do you want me to go over the stories?

The Court: What kind of incidents were they?

The Witness: The invasion of a home by three men in California.

Q. Isn't it a fact that there were only five prior actual incidents that you ever testified to in your life, not numerous?

A. Well, now, I would have to count them up. It may be five.

Q. Go ahead. Take your time.

A. But I certainly told you that I did not keep my records, and I do not know how many. Over the years I kept a number of them and I wrote the book a long time ago.

Q. Don't you know there were only five that you ever testified to before at any time?

A. There may have been five that I testified to many years after writing the book. That may be true.

Q. Is that numerous?

A. Five would not be numerous, no, sir.

Q. So that when you testified yesterday as to numerous incidents you were incorrect, were you not?

A. I was not. I am still convinced there were numerous incidents.

Q. Can you tell us about more than five of them?

A. No, sir. At this stage of my life I cannot. This was a long time ago.

Q. You couldn't in 1957, either, when you testified then, could you?

A. 1957 was four years after I wrote the book.

Q. But you didn't tell us of any more than five at that time, did you?

A. No, sir. I had thrown away my clippings and I did not have all those clippings.

[fol. 154] Q. And you signed your deposition in 1959, did you not?

A. Yes, sir. You have the record. I suppose I did.

Q. And you didn't add the new incidents to it when you signed, did you?

A. No, sir, I didn't make any such attempt.

Q. Now, one of those five instances is the Snyder case in New York, in June 1952; is that not correct?

A. That's correct.

Q. And there a woman and her daughter were held by a single convict?

A. Correct.

Q. And the daughter was killed?

A. Correct.

Q. And you have a clipping on that, haven't you?

A. Yes, sir. I did have a clipping on that, apparently.

The Court: Wait a minute. Let's get this straight. The question is "And you have a clipping on it."

The Witness: No, had a clipping.

Q. Well, your counsel produced a clipping from your file regarding the Snyder case, did he not?

A. May I explain about this file?

Mr. Malino: Just answer the question.

A. Yes, he did.

Q. Now, the next incident was a Detroit incident, was it not?

A. Yes, sir, I mentioned a Detroit incident.

Q. And there a girl was driven around in an automobile?

A. That's true.

Q. Now, the next was this Ohio incident you have mentioned. Is that not correct?

A. I mentioned that.

Q. And there you said there were three convicts and a family in their home and the family was shot.

[fol. 155] A. I am not sure I said three convicts. Three men came into a home, that is true. I am not sure whether they were convicts—at this late date.

Q. And the family was shot?

A. Yes.

Q. Have you got any clippings or any piece of paper whatsoever to show that that actually ever occurred or was ever reported in any newspaper?

A. I don't have in my possession, but I would venture to say I could obtain that, because that was printed in a book.

Q. But you haven't produced it up to now, have you?

A. No, sir. I haven't kept all that.

Q. You haven't got a single scrap of paper to show that that ever took place or was ever written about anywhere, do you?

A. No, sir. When I write a book I don't anticipate having to prove that I am telling the truth.

Q. Now, the next incident is that California incident of the three convicts who accosted a car in the desert and went in the car to the man's home; is that not correct?

A. Yes, that is the California incident.

Q. When did that take place and when did you read about that?

A. I cannot give you that information. I don't know.

Q. Have you got any piece of paper to show that that was ever reported in any newspaper at any time?

A. I have no proof that I can produce on my own. However, the New Yorker Magazine spent three pages describing my play as a reenactment of that.

Q. Have you any piece of paper dated prior to the time that you wrote your novel which shows that California incident of which you have testified?

A. No, sir, I do not.

Q. The next incident was the Hill case, wasn't it, in Philadelphia?

A. The next incident after the Snyder case.

[fol. 156] Q. The Hill case.

A. Yes.

Q. So if you take the Hill case and the Snyder case, which is the little girl that was killed, and the Detroit case, with the girl driven around in an automobile, and the Ohio case, with the three convicts and the family shot, which you have no clippings on, and the California incident, with the three convicts in the car, those are the only incidents of which you had knowledge specifically at the time you wrote your play?

Mr. Malino: Just a minute. By incidents you mean reported in newspapers, right?

Mr. Medina: Yes, sir.

A. Those are the only incidents that I can now substantiate. I certainly can't go back over the history of the writing of this book and give you all of the incidents that might have entered into it, no, sir.

Q. Well, you couldn't give us any other incidents back in July 1957, when we examined you, could you?

A. No, sir, I wasn't prepared to do that. My files had been destroyed.

Q. And at that time you told us you knew of no other specific incident, didn't you?

A. I told you I couldn't recall at that time any other specific incidents.

Q. As a matter of fact, it was you yourself that created the idea that The Desperate Hours was based on the Hill incident, was it not?

Mr. Malino: I object to that.

When?

Mr. Medina: Prior to the Life article.

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[fol. 157] A. No, sir, it was not.

Q. You signed your contract with Random House for the publication of the novel back in 1953, did you not?

A. That is true.

Q. And the Literary Guild, in July of 1953, bought the novel and scheduled it to come out in March of 1954?

A. That's true.

Q. And at the behest of the Literary Guild you drew up a little description of how you had come to write it, which appeared in the publication of the Literary Guild called "Wings" in March 1954, didn't you?

A. That is correct.

Q. Is this a copy of that publication as produced from your files (handing paper to witness)?

A. Yes, it is.

Q. When did you write that, in 1953?

A. I would think this was written in the fall of 1953. That would be my best recollection.

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(Two-page photostatic copy of "Wings" for March 1954 received in evidence of Defendant Time's Exhibit J.)

Mr. Medina: With your Honor's permission, this is the publication of the Literary Guild dated March 1954. It says:

"About The Desperate Hours.
"By Joseph Hayes.

"From the top of our hill in Connecticut—Obtuse Hill, the highway marker reads—it is possible to see, at night, far off across a lake, the circle of lights that is the 'Federal [fol. 158] Correctional Institution of Danbury. Bright as a carnival, sinister as a gun, they catch the imagination, hold it in pity, or horror or simple curiosity. Not as an author but as a husband and father, I have sometimes found myself asking the silent question: 'What if—?' The lights are not far away. 'What if there were a prison break and one or more of those desperate men escaped in this direction?'

"Then, over a year ago, the newspapers carried accounts of two incidents, both front-page stories. These had no relationship to me, to my life with my lovely red-haired wife and my two lively red-headed sons. One described an occurrence in New York State, not far away. An escaped convict had forced his way into a home, held a woman and her small daughter at knife-point until the police closed in; in the subsequent and inevitable violence, while attempting to escape, the man had stabbed the child to death. Shortly after this, or perhaps a month or two before, three men escaped from a prison even further away from my secure and comfortable home. Holding a family hostage, they hid there, eating and sleeping and then left, without violence, without the inevitable bloodshed. Newspaper readers all over the country breathed relief, felt the chill leave them. But an astonishment lingered. These were vicious and frightened men. How fortunate that family had been! Then, like myself, how many readers ask themselves quietly: What if—?

"That question, the one which creates all stories, held me in its grip. Not only as a husband and father who could glimpse, between the cold black lines of newsprint, the fear [fol. 159] and horror that the innocent people involved in both cases must have experienced—but this time as a writer, too, I asked: 'What if—?'

"Out of this conjecture grew the incidents and suspense of my story—and the characters."

By Mr. Medina:

Q. The two incidents mentioned in that exhibit were the Snyder case and the Hill case; were they not?

A. That is correct.

Q. Of course at the time your novel came out you were keeping pretty close track of book reviews that were written about it and matters of that description; were you not?

A. Yes, sir.

Q. And did you have a clipping service on those reviews?

A. I think I did.

Q. I show you Exhibit 6, being a clipping from the Philadelphia Inquirer of February 21, 1954, and ask you if you saw that?

A. I don't recall ever reading that before, but I may have.

Q. Don't you recall having seen this review which read: "In this tense, compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past." ?

A. I may have read it. I don't recall now. I received papers from all over the country.

Q. Did you ever protest to anybody about a story of that character?

A. No, sir, I did not.

Q. And, then, in the summer of 1954 you wrote the play?

A. Yes, sir.

Q. And in the fall of 1954 you were on the train going home and you saw Bradley Smith.

A. Yes, sir.

Q. And didn't Smith ask whether there was a similar case in Philadelphia and you replied that one of the cases [fol. 160] occurred in Philadelphia?

A. That's correct. I testified to that.

Q. And then in January 1955 you received a telephone call from Mr. Prideaux; is that correct?

A. That is correct.

Q. And did he say, isn't it true that a case somewhat similar to the story you were telling had occurred in Philadelphia, and you said yes?

A. I did.

Q. And you never discussed the matter of connection between the Hill incident and your play or novel again with the Life people, did you?

A. I did not.

Q. You did see Mr. Prideaux and Miss Ecker in Philadelphia on January 17, 1955?

A. Yes, sir, I did.

Q. You did go out with them to the house?

A. That's true.

Q. You made arrangements for the Hill house, didn't you?

A. At the suggestion of Mr. Prideaux I certainly did.

Q. And you saw Mr. Capa and Virginia Shevlin in Philadelphia on January 27, 1955?

A. I don't recall that. I said I do not recall their coming down previous to the shooting, but I am sure they did, and I am sure I did meet them.

Q. Now, at or about that time you wrote an article for the New York Times, didn't you?

A. That is correct.

Q. And that's Defendant Hayes' Exhibit G. You saw the title of that article, "Fiction Out Of Fact"?

A. Yes, sir, I did.

Q. And the title on the second page, "Transforming Fact Into Fiction"?

A. Yes. That was called to my attention the other day. Yes, I did.

Q. When you came to write this article, instead of there being two incidents there were four incidents, weren't there?

A. I don't know if I named the four. I suppose I did.

[fol. 161] Q. Well, didn't you say the novel and the play version of it was based on various news stories— "In California, in New York State, in Detroit, in Philadelphia,

frightened and dangerous men entered houses, and held families captive in their own homes. These were headline stories soon forgotten."

A. That's right, That's exactly what I said.

Q. And the New York State was the Snyder case?

A. That would be the Snyder case.

Q. That was where the little girl was killed?

A. Yes.

Q. And the Detroit case was the case of the girl being taken around in an automobile?

A. Yes.

Q. And the Philadelphia case is the Hill case?

A. That's right.

Q. And the California case is the one where they picked up the car in the desert, which you haven't got any pieces of paper to show whether it ever happened, isn't it?

A. Something just occurred to me that I think will substantiate the California case, if you would like to hear.

Q. Can't you tell me if you have any pieces of paper to substantiate it?

A. No, I have no pieces.

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A. (continuing) I have no pieces of paper to substantiate, nothing that I have written. There is the New Yorker Magazine.

Q. I beg your pardon. There is no piece of paper prior to your writing your novel or play that substantiates that story of yours; is that right?

A. No, sir.

Q. And yet when you wrote this article, Exhibit G, instead of there being two incidents, you now had increased the number to four, hadn't you?

A. Yes, sir, because I didn't expect to be questioned on a thing like that.

[fol. 162] Q. And, of course, when you were down in Philadelphia and the play was running, you were looking at the local reviews of the play, weren't you?

A. Yes, sir, I saw those.

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(Photostatic copy of a page from the Philadelphia Inquirer for January 13, 1955 was marked as Defendant Time's Exhibit K for identification.)

Q. Do you recall seeing that review of your play in Philadelphia (handing Defendant's Exhibit K for identification to the witness)?

A. I am sure I read it. I don't recall the specific review.

* * * * * * *

(The photostat of the page from the Philadelphia Inquirer for January 13, 1955, previously marked as Defendant Time's Exhibit K for identification was now received in evidence as Defendant Time's Exhibit K.)

Mr. Medina: Ladies and gentlemen, this is a review. It says:

"Locust offers Thriller in 'Desperate Hours.'"

I am just going to read one line. "This is the story based on an actual incident of the three-day terror of a family by three escaped convicts who invaded the home to wait for funds, first, to accomplish a vengeful scheme on the part of the gang leader and, second, to assure their getaway."

By Mr. Medina:

Q. When you saw this review which said that your play was based on an actual incident, did you get in touch with [fol. 163] the Philadelphia Inquirer and tell them they were wrong?

A. No, sir, I did not. I have no control over what news media print.

Q. But you never said anything to anybody about that, did you?

A. I did not.

Q. You did see the issue of Life for February 28, 1955, Plaintiff's Exhibit 10?

A. I did.

Q. And did you get in touch with Life at any time thereafter and tell them they were wrong?

A. No, sir, I did not.

Q. You expected coverage of the play due to its intrinsic quality, didn't you?

A. Yes, sir, I did.

Q. And, incidentally, this practice whereby if some news medium wants to take photographs of the actors of a play and you pay the actors' salaries during the time of the taking of those photographs, that is a customary procedure with regard to requests by any news medium; is that not correct?

A. It is a rather complicated question, because the actors are not normally paid. There is one photo call per production allowed, a three-hour minimum call, in which there is no extra money involved.

Q. And the reason for that photo call is for use in connection with any pictures you need in connection with that play?

A. Correct.

Q. And whether it was Life or the New York Times or any news medium who might request such photographs you would be glad to supply the actors for that purpose. Is that not correct?

A. We tried to limit it to one call so we can get our own photographs at the same time; that's true.

Q. And at this one call you get as many people taking pictures as you can?

A. Certainly.

Q. And hope that if your play has an intrinsic quality that it will be reviewed and put in the newspaper or magazine?

A. That is correct.

[fol. 164] Q. You knew at the time that your deposition was taken in July of 1957 that the complaint these plaintiffs then had in this action, which was verified July 3, 1956, claimed that your play invaded the Hill family privacy, did you not?

A. Yes, that's what they claimed.

Q. And that was the claim at that time, that your play was based on their story, wasn't it?

A. Yes, sir.

I think they went even further than that.

Q. And that was before they changed their claim to say that the play was not based on their story?

A. That's true.

Q. And even at that time you affirmed the correctness of the statement "Later they read about it in Joseph Hayes' novel, The Desperate Hours, inspired by the family's experience," did you not?

A. What did I do relative to that statement?

Q. Affirmed the correctness of that?

A. Yes, sir, I did.

Q. What is The Desperate Hours Company?

A. The Desperate Hours Company is a limited partnership composed of Mr. Erskine, myself and sixty-three investors, limited partners.

Q. Known as Broadway angels?

A. The sixty-three are known as angels, I guess.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Hayes, at the outset of your examination by Mr. Medina, he asked you whether the headline "True Crime Inspires Tense Play" was correct or incorrect, and you stated that it was correct.

A. Yes, sir. I think that there is a great distinction between inspires and based.

[fol. 165] Q. The distinction that you draw between inspires and based is that based would suggest that it was more closely connected, whereas inspiration indicates something that stimulates somebody to do something?

A. That's correct.

Q. In the first place, what do you understand—or what did you understand when you read this article—and when this question was put to you—as to the "True Crime" that was referred to as being the inspiration for The Desperate Hours?

. . . . . .

A. In yesterday's testimony, I think I testified that various cases inspired this book. This is a true crime and it did inspire this book in that sense.

Q. You mean a great number of true crimes inspired the book.

A. I would think so, yes.

Q. Along with a number of other factors and elements that we talked about at some length yesterday.

A. True.

. . . . . .

Q. In any event, Mr. Hayes, it's perfectly clear, is it not, that the Hill incident was not the sole inspiration for The Desperate Hours?

Mr. Medina: I object to the form of the question.

The Court: I will permit it.

The objection is overruled.

The Witness: Would you read it, please?

(The reporter read the pending question.)

A. That's true.

Q. The article goes on, does it not, Mr. Hayes, from stating that "True Crime Inspires Tense Play" to state that "The ordeal of a family trapped by convicts gives Broad- [fol. 166] way a new thriller, 'The Desperate Hours.'" Now, is that statement accurate?

A. In my pre-trial testimony you will recall that I said that I did not think that was accurate in the sense that I thought it was the writing of the play, the production of the play that gave the play to run on Broadway for a short time. Certainly it was the writing and the production that gave it, not the true incident. And so I argued with it on that level.

Q. Well, Mr. Hayes, was the writing of The Desperate Hours any more inspired by the Hill incident than it was inspired by any of these other incidents?

A. Well, I can only answer that consciously at the time it was not. But since that time and since I have found out more about the Hill incident, unconsciously the occurrences of the various things that happened must have been in my mind relative to the Hill incident, and because of its truth, I would think that the Hill incident—unconsciously—triggered the book in a very direct way.

Q. But you didn't tell anybody from Life Magazine that or anything like that in connection with the preparation of the Life article?

A. No, sir, I did not.

Q. When did you tell them that?

A. I have never told them that.

Q. Have you had any discussion with them in the last 48 hours with reference to your testimony?

A. No, sir, not relative to anything I have testified to.

Q. Well, did you have any discussion with them?

A. Yes, sir, I did.

Q. When was that?

A. In the corridor, just a few minutes ago.

Q. Anything before that?

A. No, sir.

Q. When were these other articles brought to your attention?

A. Which other articles?

[fol. 167] The other articles referring to the Hill incident.

A. The expansion of it?

Q. Yes.

A. They were brought to my attention within the last two weeks.

Q. Was that done by your own counsel?

A. That's right.

Q. Were you here in New York during that period?

A. Yes, sir.

Q. Did you have any recollection of any of those other news articles at the time of the discussions with the Life people?

A. No, sir, I didn't.

Q. No, there are other incidents that you testified yesterday took place and came to your attention over the years.

A. Both before and since.

Q. Of course those clippings haven't been brought to your attention.

A. No, sir.

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Q. Well, even on the basis of your general recollection of these other incidents, Mr. Hayes, they involved, did they not, the basic theme of a family held hostage by criminals or convicts? Isn't that correct?

Mr. Medina: I don't understand the question, your Honor. I don't see how the witness can.

The Court: Read it.

(The reporter read the pending question.)

A. They dealt with that theme, if you use the word prisoner as opposed to hostage. The hostage was my fictionalization of the situation.

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[fol. 168] Q. Is there any question, Mr. Hayes, but that The Desperate Hours is a work of fiction?

A. None whatever.

• • • • • • •

Q. Mr. Hayes, to shorten this, would you look at some of these photostats of newspaper articles during the period from 1947 through 1950 or 1951 and tell us whether you recall having seen any of these articles or any articles about those incidents? (Handing papers to witness)

• • • • • • •

A. I do recall this one, but I am not sure that I recall it previous or post my writing. I have read that story.

This one I have never seen. To my best knowledge now, I don't remember that at all.

I don't know whether I read this one or not, but this has been used also in the novel, and I may have read the book.

And this is the same case.

The Court: Put the ones on the side that you have read.

A. (Continuing) All I can say is this sounds familiar. I couldn't do any better than that.

Q. What would be your best recollection?

A. I think I have read this. I read an awful lot of these things.

The Court: We will take a recess at this point.

(A short recess was then taken.)

JOSEPH HAYES, resumed.

Redirect examination.

By Mr. Garment (Continued):

Q. Mr. Hayes, during the recess did you have an opportunity to look through a number of photographs of [fol. 169] newspaper articles that I showed to you?

A. Yes, sir. I didn't read them thoroughly, I glanced over them.

Q. From that collection did you select those which you recalled having seen?

A. Yes, sir, I did.

Mr. Garment: I would now like to offer these in evidence, your Honor.

Mr. Medina: The witness testified he saw them before he wrote the novel.

Mr. Garment: I will put that question.

Q. Do you recall you saw those before you wrote the novel?

A. No, sir, I couldn't say exactly when I saw them, I just wouldn't know. These I have seen. I didn't look at the dates of these papers.

Q. I will ask you to look at the dates on the papers, Mr. Hayes, starting with the first one in 1947. Would you have seen that at or about the date?

A. I would assume that I saw it previously, but it would just be my assumption.

Q. Mr. Hayes, are these articles you saw and as to which you took clippings during the period prior to the writing of The Desperate Hours?

A. These may have been and they may not have been. I couldn't give you that answer because that file has been destroyed.

Q. What is your best recollection?

Mr. Medina: He has already said he does not know.

Mr. Garment: I am entitled to have his best recollection.

The Court: Yes.

Mr. Medina: You are not entitled to have a guess.

[fol. 170] A. My best recollection will be based on the assumption of the dates of these papers.

Q. Yes.

A. On that assumption I would say I probably read those that are dated that way, if they are so dated. I didn't look at the dates. My idea in glancing over them was to see whether I had ever read them before.

Q. I tell you, Mr. Hayes, all of those are prior to the year 1953.

A. Then it would be my assumption I read them prior. I didn't read these in these papers. I probably read AP squibs and smaller stories.

Q. These are all United Press, Associated Press releases?

A. I don't know that.

Mr. Medina: One moment. I don't want you testifying to what is in those papers. They speak for themselves.

The Court: He says he recalls having read those articles, perhaps not the same ones in those papers.

The Witness: Correct.

The Court: But having read about those incidents, you say it is your best recollection that it was about the date

which appears on those papers, which is before the writing of The Desperate Hours?

The Witness: That would be my assumption, that those dates coincide with that time.

Mr. Garment: I would offer these in evidence, your Honor, in chronological order.

Mr. Medina: I would like to have some preliminary voir dire with regard to these.

By Mr. Medina:

Q. Did you take the Chicago Daily Tribune?

A. No, sir, I did not.

[fol. 171] Q. Or the Detroit News?

A. No, sir, I did not.

Q. Or the Philadelphia Inquirer?

A. No, sir.

Q. When if ever have you seen any of those papers?

A. I don't hear your question.

Q. When if ever have you seen any of those papers?

A. I have seen all of those papers in times when I was in those cities or near those cities.

Q. Were you in Chicago in 1952?

The Court: Just a minute. When you say you have seen those papers, you don't mean those editions counsel has?

The Witness: No.

The Court: But did you see those newspapers, not those particular ones? His testimony is, as I understand it, that he recalls these incidents from having read them somewhere, but not specifically in the papers which are now before him.

Isn't that your answer?

The Witness: That is correct.

Mr. Medina: Then I object to these specific papers.

* * * * * * *

(Copies of seven newspapers marked Plaintiffs' Exhibit 19 for identification.)

By Mr. Garment:

Q. Do you recall generally, Mr. Hayes, that prior to the writing of The Desperate Hours you read some clipping in a local newspaper, wherever you were then located, referring to a family held captive by three criminals, two of [fol. 172] whom were brothers named Bistrom, and a third named Allen Hartman?

A. When I read that I did recall.

Q. And the family came out of that incident unharmed in the sense of any permanent injury or physical injury?

A. Yes, sir.

Q. Do you recall again, generally, Mr. Hayes, that prior to the writing of The Desperate Hours you read some news account in a local newspaper, in or about the year 1951, about two brothers named Battershaw and a third criminal named Victor Sweet, who held a family captive in Omaha?

A. Yes, sir, when I read that paper I recall it.

Q. One of the Battershaw brothers, along with the criminal named Sweet, escaped from prison with the assistance of the other Battershaw brother?

A. Correct.

Q. Do you recall generally that the family involved in that episode came out of it physically unharmed?

A. I didn't finish the story, but I gathered, yes.

Q. Do you recall that in your direct testimony, and in the course of your cross-examination by Mr. Medina, reference was made to some news article about an assault on a girl who had been driving around in an automobile, and Mr. Medina asked you whether you saw any news clippings of that?

A. I do recall.

Q. Do you recall now having seen a newspaper account of that incident that took place in Wisconsin in or about the year 1947?

A. Yes, I do.

Q. And as part of that incident there was also a holding of a family captive by these criminals after the girl had been assaulted?

A. Correct.

Q. Do you recall that?

Mr. Malino: I didn't hear the answer.

The Witness: Correct.

[fol. 173] Q. You recall, Mr. Hayes, having read about an incident in Pennsylvania during the month of December, 1952—that is after the Hill incident—in which a family was held captive by five escaped convicts?

A. Yes, sir, when I read it I realized that I had.

The Court: What was your answer?

The Witness: Yes.

Q. Do you recall further that that family came out of that captive incident unharmed?

A. I don't recall that, but it must be true. I didn't read that whole story.

Q. Do you recall generally there were other incidents that you read about involving families held captive during these years?

A. Yes, sir, I have so testified, many times.

Q. Mr. Hayes, you had this questioning by Mr. Medina about various articles that you wrote, in which you sometimes referred to a family, two families held captive, four families held captive; do you recall that questioning?

A. Yes, I do.

Q. These articles you wrote were publicity articles to create interest in The Desperate Hours, and also to present your view of The Desperate Hours to the reading and theatre-going public; isn't that correct?

A. That was their function, yes.

Q. There wasn't any particular magic, was there, in referring to two families, or four families, or six families, or any number of families when you wrote these articles, was there?

A. No, sir, there was no reason one way or the other.

Q. The basic point you were making was that there had been incidents of this sort that you knew about; isn't that correct?

A. Yes, sir, that is correct.

• • • • • • •

[fol. 174] Q. . . . You stated when you read a number of news accounts about the Hill incident that were brought to your attention in connection with the preparation for the trial of this action, that you then saw that there were a number of elements in the Hill incident that were presumably in your unconscious mind when you wrote The Desperate Hours?

A. I found a great many similarities, yes.

Q. The same would be true, would it not, about these other incidents being part of your unconscious as a writer, when you sat down to write The Desperate Hours?

A. This whole general background of knowledge was in my mind.

Q. That is what we were getting into yesterday when I was questioning you at length about this whole business of writing a book; isn't that correct?

A. True.

• • • • • • •

Q. In these various news article or publicity articles you wrote about The Desperate Hours, you never used the name of any real live family; isn't that true?

A. No, sir, I never did.

Q. And specifically, you never used the name of the Hill family?

A. I never did.

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Recross examination.

By Mr. Malino:

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Q. I want to make clear, were you present during the entire procedure of Life taking pictures at the former Hill house in Whitemarch?

A. No, my recollection is I left early that day, and they continued.

Q. They continued. Did you see them take a picture which appears at the top of the article of just the house?

A. No, sir, I don't recall that.

[fol. 175] Q. Did you see them take any picture of just the house?

A. Without the actors, no.

Mr. Malino: That is all.

Mr. Medina: In view of the nature of the questioning by Mr. Garment, I have no alternative but to offer Exhibit 19 in evidence, so that there will be no untoward inferences from those questions, Your Honor.

The Court: The plaintiff offered them and you objected. You withdraw your objection?

Mr. Medina: I withdraw my objection now. I have no alternative in view of the questions.

The Court: All right, Plaintiff's Exhibit 19 in evidence. I assume there is no objection by the plaintiff. Is there, Mr. Garment?

Mr. Garment: No objection by the plaintiff.

(Seven copies of newspapers, previously marked Plaintiffs' Exhibit 19 for identification, now received in evidence and marked Plaintiffs' Exhibit 19.)

Recross examination.

By Mr. Medina:

Q. In any of these cases shown in Exhibit 19, Mr. Hayes, did the family consist of a middle aged father and mother?

A. I couldn't answer that without going over them in more detail that I did just now.

Q. Can you tell us now?

A. No, sir, I can't tell you without going over them in more detail than I did in this hurried moment a while ago.

Q. In any of those cases, was a surburban home involved?

A. No, sir, I don't believe there were.

[fol. 176] Q. Did any of those cases occur in the fall?

A. Well, I couldn't answer that.

Q. Did the convicts arrive at eight thirty in the morning in any of those cases?

A. No, sir, I don't believe they did.

Mr. Garment: Technically, your Honor, the Hill case took place in the summertime. September 11th is still part of the summer, if you are going to get technical about this thing.

Mr. Medina: Thank you, Mr. Garment.

Q. In any of those cases, did the convicts arrive after the father and daughter left for work?

A. No, sir, I don't believe they did.

Q. In any of those cases did the convicts capture the father and daughter after their return from work?

A. I don't believe so.

Q. Three of the clippings relate to the Lerby Gagich family near Pittsburgh, do they not?

A. You will have to let me see them. Yes, I do remember the place.

Q. Can't you remember that now, having read these clippings?

A. I went through these clippings to see if there was anything in them which responded to any flicker of memory.

Q. There were eight convicts?

A. Yes, one of them had eight convicts.

Mr. Garment: Mr. Medina, five convicts held the family captive.

Mr. Medina: And that was the question I asked. Mr. Garment, you didn't produce these yesterday on direct examination, so I would have the opportunity of reviewing them last night. Since you have seen fit to hold them back [fol. 177] that long. I haven't had an opportunity to go through them carefully.

The Court: Gentlemen, no comments.

By Mr. Medina:

Q. Two of the clippings relate to the Bistrom brothers; correct?

A. Correct.

Q. One relates to a Nebraska case and one relates to a Wisconsin case?

A. Correct.

Q. So there are four incidents in all?

A. There are four additional incidents that have been produced, yes.

Q. I am sorry, I didn't hear that answer.

A. Yes, this is four additional ones we now have substantiation for. I claim there were many more than this.

Q. But you haven't been able to tell us about them?

A. No, sir, I haven't.

* * * * * * *

Mr. Garment: May I indicate, your Honor, this testimony was taken under oath on December 3rd, 1957, and that the questioning at that time was conducted by myself.

The Court: All right.

Mr. Garment: This is at page 69, Mr. Medina.

Mr. Medina: Thank you.

(Mr. Garment and Mr. Zoeller then read from the examination before trial of Virginia Shevlin Addison, as follows:)

"Q. Miss Shevlin, you are an employee of Time, Inc.?

"A. That is correct.

"Q. You were employed by Time, Inc. in January and February of 1955?

"A. That is correct.

[fol. 178] "Q. In what capacity?

"A. As a reporter, in the Television Department.

"Q. When and under what circumstances did you work on the Life article pertaining to The Desperate Hours?

"A. Miss Ecker was going on vacation and Mr. Prideaux asked me to take over the shooting of the story in Philadelphia, which meant leg work.

"Q. Did you know anything about this article before you were assigned to it?

"A. I did not.

"Q. What were you told about it when you were assigned to it?

"A. I was told—

"Q. By whom?

"A. Tom Prideaux told me that there was a play in Philadelphia called The Desperate Hours; that we were going to shoot a photo call, as we usually do, and besides that were taking some of the cast out to a house where an incident similar to the one in the play had occurred.

"Q. Did he at that time tell you anything further about this incident?

"A. No, that is all he told me.

"Q. Or who was involved?

"A. No. I was told I would meet Mr. Hayes in Philadelphia. I was assigned a photographer and I got on a train.

"Q. You went down to Philadelphia with Mr. Capa?

"A. That is correct.

"Q. He was the photographer assigned to this job?

"A. That is correct.

"Q. What did you do when you got to Philadelphia in connection with this assignment?

[fol. 179] "A. We met Mr. Hayes. We had a personable lunch with him. We went that evening to see the show and we had a photo call that night. We shot the cast—I had been given a list of scenes that we were to shoot and the following day we took the cast—some of the cast out to the house which I had been instructed by Mr. Prideaux and Miss Ecker and with my second list, which I was instructed by Miss Ecker and Mr. Prideaux, we shot several scenes which we were going to play off against those scenes which actually occurred in the play, in doorways.

"Q. Did you know Mr. Hayes prior to meeting him on this occasion?

"A. I had never met Mr. Hayes.

"Q. Did you have any discussion with him about the projected article?

"A. We had a general discussion at lunch. I had no policy formation. I was merely there to assist the photographer and to be sure that the pictures came off, that we could get the props that we needed, to pay the lady whose house we used and just to do general—

"Q. Was there any discussion about the relationship between this real-life incident and the house and the play?

"A. No, there was not.

"Q. You did not ask and nothing was said?

"A. I have worked for Mr. Prideaux for five years and I take his word for everything he tells me.

"Q. In any event, nothing was said by Mr. Hayes on the subject of the house?

"A. No, I don't think so. We had a general discussion [fol. 180] about where the house was and about the fact that we were taking the actors to the house and that I thought it was an interesting way to shoot the story, as did Mr. Capa.

"Q. What do you mean by an interesting way to shoot the story?

"A. Interesting gimmick to make it a livelier layout."

Mr. Garment: Page 75.

"Q. Did you have anything to do with the actual research that was done on this project?

"A. No.

"Q. Did you have anything to do with reading or checking the copy that was prepared?

"A. No, I did not.

"Q. Did you have anything to do with the preparation of the captions and descriptive material for the photographs?

"A. No. Miss Ecker had seen the play, so there was no need for me to add anything to her knowledge.

"Q. When did you first learn the name of the family who had occupied the house at the time of the actual occurrence?

"A. I just don't ever remember even knowing it, before I was asked to appear here.

"Q. At that time, do you recall whether you discussed with anybody the relationship between this real-life incident and The Desperate Hours?

"A. No. I was merely told by Mr. Prideaux that there had been a similar incident occurring in Philadelphia where

the play was going on, as that incident appeared in the play, or what the play was similar to; so I never had any discussion with anybody about it. I was just told that there [fol. 181] was a similarity, it would be a good, as I said before, gimmick and would add to the interest of the story, rather than straight picture coverage, as Miss Ecker told you.

"Q. You say Mr. Prideaux had said there had been an incident similar to the subject matter of the play?

"A. That is correct. I am using my own phraseology. I don't know whether he said to me 'similar,' but that was the impression that I received. Three years later, I cannot quote exactly what he did say, but he led me to believe that this house, that an incident had occurred in this house that was similar to the one that was being portrayed in the play and that was my only knowledge about it. I had no discussion about any of the preliminary dealings with Mr. Hayes."

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Afternoon Session.

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TOM PRIDEAUX, 51 West 53rd Street, New York, N. Y., called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Prideaux, by whom are you employed?

A. I am employed by Time, Incorporated.

Q. And in what capacity?

A. As a senior editor of Life Magazine.

Q. How long have you been employed by Time, Incorporated?

A. Since 1938.

[fol. 182] Q. What was your position with Life Magazine since February 1955?

A. Senior editor.

Q. And what is your present position?

A. The same.

Q. You say senior editor in 1955. Was there any classification as senior editor in 1955?

A. To the best of my knowledge, there was. I may be mistaken.

Q. Well, isn't it a fact, Mr. Prideaux, that the classification was associate editor at that time?

A. If you say so, yes, indeed.

Q. At the present time you are on the masthead as a senior editor of the magazine.

A. That's right.

Q. What department were you in charge of as associate editor in 1955?

A. Of the entertainment department.

Q. Did you have a staff?

A. Yes.

Q. And did you have assistant editors?

A. That's correct.

Q. And those assistant editors would handle specific entertainment departments other than the theater; is that correct?

A. That's correct.

Q. You would handle the theater; is that correct?

A. Correct.

Q. And you would have general supervision over the entire department as the editor in charge; is that correct?

A. There has been a slight modification—

Q. Would you simply answer my question as to what the procedure was in 1955?

A. That is correct, at that time.

Q. Now, there were various departments in Life Magazine in 1955, as there are now, in addition to the entertainment department; is that correct?

A. Correct.

Q. And that would be science, nature, news and so forth?

A. Right.

[fol. 183] Q. Each of those departments would have—at that time—an associate editor in charge; is that correct?

A. Right.

Q. And a staff working under that particular associate editor?

A. Right.

Q. Now, in addition to the various associate editors, Mr. Prideaux, there were in 1955, and there are at the present time, editors whose responsibility would cover all departments; is that correct?

A. Correct.

Q. And they would be senior to the various associate editors, would they not?

A. Yes.

Q. So that in 1955, there was, for example, the photo editor; is that right?

A. Correct.

Q. And did he have charge of photographs relating to the entire magazine; is that correct?

A. Not exactly.

Q. Well, in general terms he would have been in charge of the photographic department?

A. Yes, in general terms.

Q. And would there have been a director of research who was an editor, whose authority ran over all departments? Is that correct?

A. That's generally true, yes.

Q. And there was a copy editor?

A. Correct.

Q. And his authority ran over all departments? Isn't that correct?

A. Generally true, yes.

Q. He would edit copy coming from each and every department?

A. Correct.

Q. What was the name of the copy editor in 1955?

A. Mr. Joseph Kastner.

Q. And Mr. Kastner is still the copy editor of Life Magazine?

A. Right.

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Q. In addition to the supervisory editors that we have just talked about. Mr. Prideaux, was there a managing editor in 1955?

A. Yes, indeed.

[fol. 184] Q. What was his name?

A. Edward K. Thompson.

Q. And would he be the operating head of the entire magazine?

A. Yes.

Q. And is Mr. Thompson still in that position with Life Magazine?

A. Not exactly, no.

Q. What difference is there?

A. There is another managing editor now. Mr. Thompson still has an over-all supervisory position.

Q. That is what I was getting at. And his title at this point is editor?

A. Correct.

Q. Would you tell the jury what your responsibilities as editor in charge of the entertainment department consisted of in 1955?

A. Yes. It had to do with the obtaining of stories for Life Magazine. This consisted of deciding on what stories to shoot, what stories were suitable, what stories were newsworthy, requesting that photographers be assigned to these stories, in some cases the advisability of doing the story at all was decided by my seniors—in some cases—and then, in more detail, it meant making arrangements to have the stories photographed, and once they were photographed it meant presenting the photographs to the assistant managing editor or the managing editor, usually in conjunction with an art editor making layouts, and these, in turn, were submitted to the managing editor himself.

And when they were finally okayed if they were okayed, it was my problem and my job to do the writing on the stories in this department, particularly the ones that pertained to the theater.

Q. And by the writing, that would be the text and captions of the particular articles; is that right?

A. That's right.

[fol. 185] Q. Mr. Prideaux, how did you and other members of your department, to the extent that you know, receive information about entertainment events?

A. Well, in a variety of ways.

Q. Very briefly tell us.

A. Through reading the newspapers, reading trade journals, word of mouth and from stringers—that's a word that means usually part-time employees in other parts of the country who are on our staff, suggestions that they would submit and suggestions from bureau heads in other parts of the country.

Q. Would you also receive suggestions from press agents for story ideas?

A. From time to time.

Q. But you would receive them from press agents along with these others?

A. Yes, indeed.

Q. Now, was it your job in the first instance to decide what particular event you thought was suitable for coverage?

A. That's right.

Q. And would you then have to obtain somebody else's approval before photographing that particular event?

A. Yes.

Q. That would be the photo editor, would it not?

A. Yes.

Q. And in connection with obtaining the permission of the photo editor, you would prepare and submit a story memorandum, would you not?

A. Usually, yes.

Q. Did you prepare such a memorandum in connection with this article? And I am referring to The Desperate Hours article.

A. To the best of my recollection, yes.

Q. Is that memorandum any longer in existence?

A. No, it is not.

Q. Was it in existence when I examined you in 1957?

A. No, it was not.

Q. When did it cease to be in existence?

A. Sometime prior to that.

[fol. 186] I don't know when.

Q. After obtaining the consent of the photo editor, you would then photograph the particular article; is that right?

A. Yes.

Q. But that would not mean necessarily that the article was going to run, would it?

A. It would not.

Q. As you indicated before the photographs would then be prepared in a layout?

A. That's right.

Q. And submitted to the managing editor; is that correct?

A. Right.

Q. And would it be the managing editor who would have the final say as to whether or not a proposed story would run in Life Magazine?

A. Right.

Q. So that the initiation of the idea by yourself and the taking of photographs would not necessarily mean that the article would run?

A. Correct.

Q. And there have been many articles, have there not—I shouldn't say articles—there have been many stories which have been photographed, put in layout form, submitted and then junked for one reason or other?

A. Correct.

Q. Now, Mr. Prideaux, how did The Desperate Hours first come to your attention as a possible subject for an article in Life Magazine?

A. To the best of my recollection, it came first in a very brief item in a newspaper just announcing that such a production was on the board or scheduled. Then a group of editors had lunch with the producer of The Desperate Hours, Mr. Robert Montgomery—

Q. Mr. Prideaux, I asked you when it first came to your attention. That was by reason of some item indicating that the play was in production?

A. To the best of my knowledge, yes.

[fol. 187] Q. Did there come a time when there was a luncheon?

A. Yes, indeed.

Q. And was that a luncheon that was attended by Robert Montgomery?

A. Right.

Q. And Mr. Montgomery was, of course, the director of The Desperate Hours?

A. Right.

Q. And was that luncheon given for Mr. Montgomery by a group of editors of Life Magazine?

A. Right.

Q. What was the basic purpose of that luncheon for Mr. Montgomery?

A. Mr. Montgomery had a connection with Eisenhower and had been working with him for some time on his campaign, and the purpose of the luncheon was to hear Mr. Montgomery talk about his non-theatrical activities; and the theatrical activity was discussed in passing.

Q. Would this have been the first occasion that Life Magazine had discussed the matter of Mr. Montgomery's association with former President Eisenhower?

A. I don't know.

Q. Well, don't you know that there was an article in Life Magazine the year before about Robert Montgomery and his role as assistant to the President on television?

A. At this moment, I didn't recall it.

Q. In any event, Mr. Prideaux, there was this luncheon.

A. Right.

Q. And, as you say, The Desperate Hours was mentioned in passing.

A. Right.

Q. And was there some mention made by Mr. Montgomery at that luncheon about the stage setting for The Desperate Hours?

A. Yes, there was.

Q. And did he indicate or state that in his opinion The Desperate Hours would be an interesting play for Life Magazine to cover?

A. Yes, he did.

[fol. 188] Q. Because of the stage setting?

A. Correct.

Q. Do you recall the date that luncheon was held?

A. No, I don't.

Q. Have you made an effort to find out?

A. Pardon me?

Q. Have you made an effort to find out?

A. I am sorry.

Q. You were asked by our counsel on several occasions to locate the date of that luncheon, weren't you?

Mr. Medina: When was this request made?

Mr. Garment: It was made by me in 1957 and several times thereafter.

The Court: The question is have you made an attempt to find it.

Q. That's my question. Have you made an attempt to find out the date of the luncheon?

A. I believe the deposition is there.

Q. No, my question is did you make an effort to find out the date of this luncheon subsequent to that?

A. Yes.

Q. And have you been able to find out when that luncheon took place, the exact date?

A. I think so. I am not quite sure; I don't quite recollect what happened on that.

Q. Well, what date was the luncheon held?

A. I don't recall. I think it was put in the deposition as a correction or an addition.

Q. Well, when you testified in the first instance—that is, there were two sessions when I examined you; is that right?

A. Yes.

Q. And in your first testimony you recalled that the luncheon had taken place in the summer of 1954?

A. That's right. And that was inaccurate.

Q. And that was inaccurate?

A. Yes.

[fol. 189] Q. It subsequently turned out that the luncheon had taken place much later.

A. That's right.

Q. Your counsel stated for the record that it took place about December 1st.

A. Correct.

Q. Have you found out since then when the luncheon actually took place?

A. No.

Q. Have you endeavored to find out?

A. Yes.

Q. There is no record to indicate it?

A. No.

Q. After this luncheon did you see Mr. Montgomery again?

A. Yes.

Q. Where did you see him?

A. In his office.

Q. Did you make an appointment at that luncheon to see him again?

A. Yes, I did.

Q. And did you make that appointment in order to discuss The Desperate Hours with Mr. Montgomery?

A. Yes, solely.

Q. And did you meet with Mr. Montgomery in his office?

A. Yes.

Q. Did you talk further about The Desperate Hours?

A. Yes.

Q. Did you talk further about the stage setting?

A. Yes.

Q. Was there any talk about real life incidents?

A. Again, as best I recall, there was a passing mention of that, but at the time the stage setting seemed to have great photographic possibilities in that double decker set.

Q. So that you have no specific recollection of whether there was a reference made to real life incidents?

A. I have a pretty strong recollection, yes.

Q. Do you recollect whether there was a reference to an incident or to incidents?

A. I think it was an incident.

Q. Did you pursue the matter any further with Mr. Montgomery at that point?

[fol. 190] Mr. Malino: What matter?

Q. The matter of the incident or incidents.

A. No.

Q. What was the next thing that happened in connection with the Life article about The Desperate Hours?

A. In the sequence of events, I think the next incident was a conversation with Bradley Smith, a photographer sometimes hired by Life.

Q. That took place after this second meeting with Robert Montgomery?

A. That's right.

Q. And you hadn't come to any decision about photographing The Desperate Hours in any fashion?

A. No, that's correct.

Q. Where did you see Bradley Smith?

A. I saw him passing through the office on some office business of his own, and we stopped in the hallway.

Q. Did you have a brief conversation?

A. We had a brief conversation.

Q. Just for a few seconds, ten, twenty seconds?

A. I would say less than a minute, probably.

Q. Did Mr. Smith mention The Desperate Hours?

A. That was the purpose of his stopping me, yes.

Q. And what did he say?

A. He said that the play had a substantial connection with a true-life incident of a family being held by escaped convicts near Philadelphia.

Q. Did you ask him where he had gotten that information from?

A. He told me that he was a friend of Mr. Hayes—I knew that, anyway—I assumed—and he made comments that led me to believe that this was from Mr. Hayes himself.

Q. And you recall today that Mr. Smith said to you specifically in this conversation in 1955 that there was a sub-
[fol. 191] stantial connection between a true-life incident in or near Philadelphia and The Desperate Hours?

A. The exact wording—

Q. That's the wording you used, Mr. Prideaux. I ask you whether that is your recollection today.

A. The exact wording of Mr. Smith's comment to me has long gone out of my memory.

Q. Long gone out of your memory?

A. Long gone out of my memory. But the impression he gave me is still very vivid.

Q. Well, you were examined by me in 1957, just about two and a half years after the incident in question; is that right?

A. Right.

Q. Some four years ago.

A. Right.

Q. Do you recall my asking you these questions and you giving these answers at that time?

Mr. Medina: Page?

Mr. Garment: Page 34.

Q. Referring to the discussion with Mr. Smith:

"Q. Can you be a little bit more specific about it?

"A. I am afraid I can't because I would place it not very specifically between October 1st and December 15th. The timing of that remark made no impression on me at all because it was prior to the play.

"Q. What remark?

"A. Bradley mentioned that he thought it would be interesting since this play related to the specific incident, to follow a pattern which we have from time to time adopted of doing a restaging of incidents in the play away from the stage.

"Q. Suppose you go back to the beginning of this conversation and let's try to develop it in some sequence. The [fol. 192] meeting took place between October 1st and December 15th, of 1954, under what circumstances?

"A. Under the most casual circumstances.

"Q. What were they?

"A. I will be glad to tell you. Each one of us was going rapidly through the halls and practically bumped into each other. Bradley said, 'Say, by the way, you know about this play?' I said yes, and then he made his suggestion, and this occurred. I would say, roughly within a period of twenty seconds. He went his way and I went mine.

"Q. What did he say particularly, either the words or the substance, in connection with this real-life aspect of it?

"A. I can't remember the words. The substance was simply that this might be an interesting play to treat as we have treated other plays, outside of the theater."

Do you recall my asking you those questions and you giving those answers in 1957?

A. Yes, certainly.

Mr. Medina: Can I do a little more reading, your Honor?

Mr. Garment: I think that would be appropriate when you examine Mr. Prideaux.

The Court: No, no, because I don't want any impression left in the minds of this jury.

If it immediately follows it, I will permit it.

Mr. Medina: Page 40:

"Q. Did you know that it involved a family known as Hill?

"A. Whether I remember the name Hill or not I don't recall.

"Q. Did you know then?

"A. I think this might help us all. I don't think that [fol. 193] Bradley had any idea of going specifically to the Hill house. As I recall my mental process of that, I didn't think generally of going to the Hill house. I think Bradley mentioned that the events took place near Philadelphia and that is as far as I absorbed at the time.

"Q. So that at that time what you knew was that it involved a real-life incident and that it presumbly had as its situs Philadelphia or the area near Philadelphia?

"A. That is correct."

Mr. Garment: Continuing:

"Q. Do you know where Bradley Smith got this Philadelphia location from?

"A. I don't know. I would—I don't know."

By Mr. Garment:

Q. Now, Mr. Prideaux, after this discussion with Bradley Smith, what was the next thing that happened in connection with the article about The Desperate Hours?

A. I saw either in a newspaper or calendar of theatrical events that is sent to our department that the play was trying out in Philadelphia. In consequence, the thought occurred to me that this would be an opportunity to use this kind of coverage, which when it is feasible we like to do.

Q. Of course, at this point you didn't have any actual knowledge as to the relationship, if there was one, between The Desperate Hours and this incident in Philadelphia; is that right?

A. Having not seen the play, that's right.

Q. And having not spoken to the author.

A. Correct.

Q. And having not read any articles about the actual incident.

A. That's not true.

Q. You read articles about the actual incident?

A. At the time it came out in the New York papers.

Q. Did you recall them at that time?

A. Yes.

[fol. 194] Q. Did you call the press agents for The Desperate Hours?

A. Right.

Q. And that would have been Phyllis Perelman and Marian Byram?

A. Right.

Q. You called them to try to find out where you could reach Mr. Hayes.

A. Right.

Q. And did you ask them what they knew about this incident in Philadelphia?

A. Right.

Q. And did they tell you that they didn't know anything?

A. Correct.

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Q. Did they suggest that you call the author about this?

A. I don't recall. I may have suggested that I call the author.

Q. Did you ask where you could locate Mr. Hayes?

A. Right.

Q. And did they tell you?

A. Yes, indeed.

Q. And did you call Mr. Hayes?

A. Right.

Q. You reached Mr. Hayes in Philadelphia, did you not?

A. Right.

Q. And that was at the Warwick Hotel?

A. Right.

Q. Before I take that up with you, Mr. Prideaux, that is the phone call to Mr. Hayes, at that time, that is, prior to your call to Mr. Hayes, did you then have a specific recollection that it was related to one incident or several incidents?

A. To my best recollection, one incident.

Mr. Garment: Page 39 of Mr. Prideaux's examination before trial.

Q. Do you recall, Mr. Prideaux, that when I examined you in 1957, I asked you these questions and you gave these answers.

"Q. First, to go back to your discussion with Bradley Smith, have you given us the discussion?

[fol. 195] "A. I have given you the substance of what at the moment seemed a very interesting suggestion. But it was made in such a hurry and I never saw Bradley until, I think, after the production of the play.

"Q. Again, did he say anything that you now recall about the real-life aspect of it?

"A. He assumed that I knew about the real-life aspect, which indeed I did.

"Q. On the basis of this editorial luncheon that you told us about?

"A. On the basis of not only the editorial luncheon, but the general publicity attached to the book.

"Q. Which was to what effect?

"A. Very briefly, that the germ of the idea was generated by a real-life incident.

"Q. By one real-life incident?

"A. I don't recall whether it was one incident or not."

Do you recall my asking you those questions and your giving those answers?

A. No, I don't recall your asking that.

Q. You do not recall that.

A. Not at the moment, no.

Q. In any event, you had Mr. Hayes on the phone.

A. Certainly.

Q. And you discussed this idea with him?

A. Right.

Q. Did you ask him whether The Desperate Hours was based upon or inspired by this specific Philadelphia incident?

A. In so many words, no. It was assumed.

Q. It was assumed?

A. That there was a connection between The Desperate Hours and the Philadelphia incident.

Q. Mr. Prideaux, you were calling the author of the play and the novel The Desperate Hours, is that right?

A. Correct.

[fol. 196] Q. And you had in mind the possibility of doing a story connecting The Desperate Hours with a true life incident; is that correct?

A. Correct.

Q. And you had had certain discussions with various people about a real-life incident or real-life incidents and stage settings prior to that time; is that correct?

A. Correct.

Q. And you had spoken to the press agents, the publicity representatives of Joseph Hayes and asked them what they knew about a real-life incident in Philadelphia, and they said they knew nothing. Is that correct?

A. That's correct.

Q. Now, you had the author on the phone; is that right?

A. That's correct.

Q. And you tell the Court and jury that you assumed at that point—

A. I had read—

Q. One second, Mr. Prideaux—you assumed that The Desperate Hours was related to this specific Philadelphia incident.

A. Yes.

Q. And you did not ask Mr. Hayes that question?

A. No.

The Court: What was your answer?

The Witness: No.

The Court: No, you did not ask him.

The Witness: That's correct.

Q. Did you do anything thereafter to confirm the assumption that you made at that time?

A. Yes. Again to the best of my memory, I had read the review of this play or information about this play in Variety. I was not coming to the play with no knowledge of the content or the environment or the theme of the play.

Q. Mr. Prideaux, I would just like to ask you whether you did anything in particular to confirm the assumption or impression that you had as to there being a specific rela-
[fol. 197] tionship between this Philadelphia incident and the writing of The Desperate Hours.

A. Yes.

Q. Did you ask the author?

A. I assumed, again—the author and I knew our mutual feelings about this. That was the assumption of our relationship.

Q. You spent time with Mr. Hayes thereafter, didn't you?

A. That's right.

Q. And in the course of that you never asked him whether this was sparked off, triggered off, inspired or what by this incident in Philadelphia; isn't that right?

A. Mr. Hayes—

Q. Will you just answer my question?

Mr. Medina: Won't you let the witness answer the question?

Mr. Garment: The question calls for a yes or no, I think.

The Court: Read the question.

(The Reporter read the pending question.)

Q. Can you answer the question yes or no?

Mr. Medina: Will you let the witness answer?

The Court: You may answer.

If it is not responsive, I will strike it out.

A. A specific question of that nature was never asked, but a discussion of the play itself, what the play was about, in the light of my own knowledge of what the true incident was about, confirmed in my mind beyond any doubt that there was a relationship, and Mr. Hayes' presence at this whole negotiation was tacit proof of that.

Q. Mr. Prideaux, this incident took place in the fall of 1952; is that right?

A. Right.

Q. This meeting that you had with Joseph Hayes in Philadelphia was in January 1955?

A. That's correct.

[fol. 198] Q. When had you seen the article or articles about the Hill incident last prior to that date?

A. At the time of the incident.

Q. That was some two and a half years before?

A. Yes, indeed.

Q. And that was clearly in your mind at the time you were discussing this matter with Joseph Hayes?

A. Not clearly, but very—

Q. What was in your mind at that time?

A. The general circumstances of this very moving story, the kind of people involved in it and the kind of courage that the family displayed.

Q. What courage?

A. Level-headedness, the stamina, the sticking together. It was a very memorable story in the newspapers.

Q. In any event, Mr. Prideaux, when you were with the author in Philadelphia, you never asked him the specific question was this specifically inspired by the Hill incident. Can we just get a yes or no answer?

A. The answer is no.

Q. You made an appointment to see Mr. Hayes in Philadelphia?

A. That's right.

Q. And you and an associate of yours went down to see Mr. Hayes?

A. Right.

Q. And the purpose of that visit to Philadelphia was to see the play, was it not, among other things?

A. Correct.

Q. And there had also been some talk about a house with Mr. Hayes in the course of this telephone conversation?

A. That's right.

Q. You had asked Mr. Hayes to find out about this house, hadn't you?

A. I believe so.

Q. You asked him to find out whether that house was available for shooting a story like this if you decided to do it; is that right?

A. To the best of my recollection, yes.

Q. And to see who was living there?

A. I think so.

[fol. 199] Q. Did Mr. Hayes say that he would do what you asked him to do?

A. It's very hard for me to remember exactly. I believe so.

Q. You went to Philadelphia on January 17th?

A. Right.

Q. And Miss Laura Ecker accompanied you?

A. Right.

Q. Miss Ecker is or at that time, rather was a reporter on Life Magazine; is that right?

A. Right.

Q. And they are also sometimes described as researchers, are they not?

A. That's correct.

Q. Will you tell us briefly what the function of a reporter or researcher on Life Magazine was in 1955?

. . . . . .

A. There are various functions. One is the checking and ascertaining of facts. Every piece of copy is checked, after it is written, by a researcher. Another is keeping track of activities in the field in which she is involved.

Q. And they also serve the function of obtaining research materials for you on a particular assignment, do they not?

A. Right.

Q. You met Mr. Hayes in Philadelphia?

A. Right.

Q. And you drove out to the house?

A. Right.

Q. Then you spent some time at the house?

A. Yes.

Q. In the course of the trip out to the house or at the house, did you discuss with Mr. Hayes the relationship between The Desperate Hours and the Hill incident in terms of story?

A. May I answer that as to what exactly what happened or do you want a yes or no answer?

Q. Can you answer my question whether you discussed—

A. No, we did not—for good reasons.

Q. For good reasons?

A. I believe so.

Q. Tell us what those good reasons were.

[fol. 200] Mr. Malino: I object to this. We will never get through.

You didn't discuss it, did you?

The Court: He said no.

Mr. Medina: I am not quite clear on your Honor's ruling.

The Court: He answered the question. He said no.

Mr. Medina: Mr. Garment was saying, "Tell us what the good reasons were."

The Court: He said something about there being good reasons. If it is relevant I will permit it. Although I think Mr. Malino is correct. Getting into every one of these little incidents—I don't want to characterize them now as being minor or not, but it does seem to the Court that going into all these incidents we will never finish this trial.

Mr. Garment: I have no desire to prolong this, but when a statement is made like that—

The Court: If you want it and if it will save time in cross-examination, if Mr. Medina will ask this question, suppose we get it now and get it over with.

What were the so-called good reasons that you referred to?

The Witness: We were very concerned as to whether it would be feasible to set up a photographic situation with a cameraman, bringing the actors out, that would relate to this play. We were reporting on the play at that time.

By Mr. Garment:

Q. Well, you were planning—

Mr. Medina: Please let him finish.

[fol. 201] Q. Let's have the rest of the reasons, then.

A. We were very much concerned—I had not as yet seen the play—in finding out whether there were situations in the play that took place off stage that could be worked into the setting of the house. This was a technical problem involving camera angles, involving a shooting script, and we were very much concerned with it.

Q. Weren't you concerned, Mr. Prideaux, with finding out what the relationship was between The Desperate Hours and this real-life family that were going to be involved in this article?

A. We were pretty well convinced by this time that it was a very strong relationship.

Q. Who is "we"?

A. My researcher and I.

Q. You did not feel it was necessary or appropriate to ask Mr. Hayes what incidents in The Desperate Hours were drawn from the actual Hill incident?

A. No.

Q. And there was no discussion of that subject at all?

A. I don't recall any.

Q. At the house, was there any discussion on that subject?

A. No.

Q. Was that a matter of any interest to you?

A. It was of considerable interest in the overall story, but on that particular pilgrimage we made there it was of very little interest at all.

Q. Did you speak to the occupant of the house?

A. Yes, indeed.

Q. And you made arrangements for the use of the house for the photo work?

A. Yes.

Q. And then you returned to Philadelphia?

A. That's right.

Q. And did you obtain any newspaper clippings about the Hill incident at that time?

A. Not at that time.

Q. Did you ask Mr. Hayes for any clippings or research materials?

A. No.

[fol. 202] Q. Did you know the name of the family when you were in that house? I mean the real-life family.

A. I don't recall.

Q. Did either you or your associate raise any question as to what had actually happened in real life to this family?

Mr. Malino: When?

Q. At the house?

A. There was no occasion to. They were not there.

Q. Was there any question as to how they had fared in the course of the incident or where they were at the present time?

A. We had heard they were in Connecticut.

Q. You had heard that they were in Connecticut?

A. Yes.

Q. Where did you hear that from at that time?

A. I don't recall.

Q. Mr. Hayes testified that he didn't even know the name of the family on that occasion. You were here and heard him testify to that. Isn't that true?

A. That is true.

Q. Well, how did you know that they were in Connecticut?

A. I said I heard, and I don't recall where I heard.

Q. Do you recall from whom you heard it?

A. No, I do not.

Q. In any event, that evening you saw the play?

A. That's right.

Q. And then you went back to New York?

A. That's right.

Q. After that, you submitted your story memorandum to the photo editor; is that right?

A. That's right.

Q. And he approved the assignment of a photographer to the story?

A. Yes.

Q. And Mr. Cornell Capa was assigned and went down to Philadelphia; is that right?

A. Right.

[fol. 203] Q. And he was accompanied by Miss Shevlin; is that right?

A. That's right.

Q. And photographs were then taken in the house and in the theater; is that right?

A. Right.

Q. Very briefly, these arrangements with respect to the division of expenses, is that the standard policy of Life Magazine?

A. Yes, it is.

Q. Does it make any difference what the size of the stagehands' overtime expense may be?

A. No.

Q. That has to be absorbed by the producer of the play?

A. That is the general arrangement.

Q. And you take care of transportation and other expenses?

A. Extras, yes.

Q. Ultimately you received the photographs; is that right?

A. Pardon me?

Q. Ultimately you received the photographs?

A. Yes.

Q. And there were a great number of them?

A. (No reply.)

Q. Well, there were many photographs?

A. Many.

Q. And you prepared a layout of the article; is that right?

A. Eventually, yes.

Q. You hadn't written any text as yet?

A. No.

Q. And the layout simply consisted of the photographs mounted on cardboard or some other substance, and then photographed?

A. Right.

Q. And distributed to various people?

A. Yes.

Q. And then there was a conference with the managing editor, was there not?

A. They were submitted to the managing editor.

Q. Did you say that that conference takes place with the managing editor of Life Magazine and the art editor and yourself?

A. The word "conference" does not seem quite accurate, but it will do.

[fol. 204] Q. Well, those pictures have to be displayed, do they not?

A. Certainly.

Q. There is no text.

A. Certainly.

Q. So that there is some kind of a meeting in the course of which you would explain it?

A. That's right.

Q. To the managing editor, as to what the story was all about?

A. Right.

Q. What did you tell Mr. Thompson at that time?

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A. I don't recall word for word the conversation at all. I remember the essence of it.

Q. What was the essence of it?

A. The essence of it was here was an important play which we had seen and endorsed first and foremost as a theatrical play that deserved to be covered in Life; that, also, there was a strong connection between the play and

the incident, and that we proposed to draw this connection by certain devices in the layout.

Q. What devices would those be?

A. By the photograph of the house itself and by a headline, one of the many headlines from the Philadelphia papers.

Q. And by the text?

A. That's always assumed, yes.

Q. Did you have a headline at that time?

A. I don't recall.

Q. Well, you must have had. It would be part of the layout.

A. To all intents and purposes, yes. Whether we literally had it in our hand, I don't know.

Q. Did Mr. Thompson ask you what the basis was for your conclusion that there was a direct relationship between The Desperate Hours and a specific incident?

A. I don't recall that he did.

[fol. 205] Q. Did he ask you whether you proposed to mention the name of any particular family in your article?

A. I don't recall.

Q. Did he approve the story idea at that conference?

A. Yes, he did.

Q. And did you then go ahead and start writing the text?

A. Eventually, yes.

Q. Now, you have seen, and I have read to the jury, the finished article as it appeared in Life Magazine, Mr. Prideaux.

A. Right.

Q. But that article, of course, went through various drafts. Isn't that correct?

A. Right.

Mr. Garment: May I have the carbon morgue file, Mr. Medina?

(Mr. Medina handed papers to Mr. Garment.)

Q. I show you this manila folder that bears the printing on it "Morgue—Carbon File" and ask you whether among

the contents of that file would be the drafts of the article about The Desperate Hours and the Hill family.

A. That's correct.

Q. Would you hold onto this for just a moment, Mr. Prideaux.

Did you assemble the various drafts at some point after the initiation of this case?

A. To the best of my recollection, yes. If I didn't, somebody did for me.

Q. Would you let me have the first draft of the article. Would that be the first draft, Mr. Prideaux (indicating)?

A. I believe it would, yes.

[fol. 206] Q. I wonder if you could explain what these other drafts are.

A. When the first draft is written it is sent to what is called the copy room. The copy room makes various copies, five or six copies of the original draft, which are, in turn, sent to various departments in the magazine. One would be sent to the checker, Miss Ecker, another would be sent to Mr. Kastner, the copy editor, another would be sent to the lady who is in charge of personnel—

Q. That would be Miss MacPhail?

A. That's correct—and a copy comes to me, also.

Q. Would anybody else also receive copies?

A. I'm not sure.

Q. How long have you been with Life Magazine?

A. I mentioned that in my testimony, since 1938.

Q. But you are not sure who else would receive copies?

A. That's changed from time to time, the procedure. But I know the principal ones.

* * * * * * *

(The first draft of the Life article was received in evidence as Plaintiffs' Exhibit 20.)

Q. Mr. Prideaux, the typewriting in this article was by you, was it not?

A. Yes.

Q. And the handwritten insertions and changes would have been by you, also?

A. That's correct.

Q. Would you read that to the jury?

Mr. Malino: What?

Q. The first page, representing the body of the text of the article.

Mr. Malino: Before it was changed, as it was first typed?

[fol. 207] Q. With the changes in your own handwriting.

A. "In 1952 a young Indianapolis author, Joseph Hayes, read a hair-raising report of a suburban Philadelphia family held prisoner in their home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to play off. Now that The Desperate Hours is a Broadway hit and two more companies are rushing into production, Hayes stands to make a half million dollars on his Philadelphia horror story."

The Court: Philadelphia what?

The Witness: "—horror story."

Q. Would you go ahead.

A. "Directed by Robert Montgomery and expertly acted, Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis. Life photographed this play at its Philadelphia tryout and transported some of the actors to the actual house where the family, who no longer live there, were besieged. On the next page scenes from the play are reenacted on the original site of the crime."

Mr. Garment: Your Honor, at this point I would like to use the first of the blowups of certain of these pages so that the jury can follow the questioning. May we have a very brief recess to set that up?

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[fol. 208] Q. First I show you this four and a half page document with the name "Kastner" written in pencil at the top right, and I ask you whether that is the copy of the initial draft that went to Mr. Kastner.

A. I'm sorry, I don't understand the question.

Q. I will try again. Is this a copy of the original draft as it was retyped, incorporating your handwritten changes and then distributed to Mr. Kastner?

A. That's correct.

• • • • • • •

(Draft of Life article that went to Mr. Kastner received in evidence as Plaintiffs' Exhibit 21.)

Q. I show you a nine-page collection of typing and handwriting and ask you whether that is the researcher's copy of the original draft as retyped together with a subsequent draft of the article that went to your researcher?

A. Yes, it is.

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(Copy of Life article that went to the researcher received in evidence as Plaintiffs' Exhibit 22.)

Q. I now show you a six-page document with typewriting and handwritten materials and also crayon marking in green and red. Would that be a copy of a subsequent draft of this article—would you explain what that is?

A. Yes. This is a subsequent draft to the one you see there. This is after it was edited by the copy editor, and this comes back to me with instructions to make minor cuts and additions, purely to accommodate the printer.

[fol. 209] Q. That is, the red notations would be notations as to the number of additional characters to be added or subtracted for purposes of space?

A. Correct.

Mr. Medina: Can we call this the greening copy?

The Witness: We call that the greening copy because we do that in green pencil.

The Court: Greening, g-r-e-e-n-i-n-g?
The Witness: That's correct, your Honor.
Mr. Garment: I offer that in evidence.
Mr. Medina: No objection.

(The greening copy of the Life article was received in evidence as Plaintiffs' Exhibit 23.)

Q. I now show you a seven-page document bearing the red stamp notation "Duplicate of printer's copy," which also shows various penciled and crayon markings, and ask you what that document is.

A. This is the final copy on which all greens—as we call them, those are instructions to the printer—have been consolidated. This is the copy that includes the final initials of the managing editor as well as the copy editor, and it is ready for being set up in type.

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(The final copy of the Life article was received in evidence as Plaintiffs' Exhibit 24.)

Q. Now, Mr. Prideaux, the blow-up is a magnification of the first page of the first draft of this article prepared by you; is that correct?

A. Correct.

Q. What materials did you have available to you at the time you wrote that first draft?

A. I had our own morgue materials and I had seen the play twice at that point.

[fol. 210] Q. Did you have any news clippings relating to the actual Hill incident?

A. The actual clippings and their content I don't completely recall. There were many.

Q. I know there were many, but I am asking you whether you had available to you at that point, when you sat down to write the first draft of this article, did you have any clippings of the Hill incident before you?

A. To the best of my recollection, yes.

Q. What did you have before you?

A. I don't recall in detail.

Q. Well, we have heard reference throughout this case to the New York Times.

A. I honestly don't recall which clippings I had at that time.

Q. Isn't it a fact, Mr. Prideaux, that you didn't have any clippings before you?

A. No, it is not a fact.

Q. Well, let me show you what is the fourth page of Exhibit 20, representing your first draft of the captions under the two photographs of the actual article. Would you have reference to the document in front of you?

A. Yes, I see it.

Q. Now, I draw your attention, Mr. Prideaux, to the first caption which would have appeared below the photograph of the newspaper headline. Is that right?

A. That's right.

Q. Originally you said "Real crime." Do you recall that?

A. I don't recall it, but it's here that I said it.

Q. Yes. In any event, "Actual event" was your first revision. "Actual event in 1952, as reported in newspaper above, took place in isolated house ten miles outside Philadelphia, where three convicts from Koming Penitentiary held family of James Hill as prisoners until they could obtain money. All three convicts were caught later."

[fol. 211] Now, there is no such place as Koming Penitentiary, is there?

A. May I explain that, please?

Q. Let me ask you the question. Koming is a word that you use in Life Magazine for material that is not available at that moment; isn't that right?

A. That's correct.

The Court: What is your answer, "that's right"?

The Witness: That's right.

Q. It means coming, c-o-m-i-n-g?

A. That's right.

Q. To be supplied later; is that right?

A. That's right.

Q. And at that point you did not know what penitentiary these men had come from?

A. That's not necessarily true.

Q. Isn't it a fact, Mr. Prideaux, that the New York Times article and every article that referred to the actual Hill incident reported the fact that they had escaped from Lewisburg Penitentiary?

A. I am sure they did.

Q. And yet when you sat down and wrote that first draft with one or more news clippings in front of you, as you told this jury, you put in Koming Penitentiary; is that right?

A. That's right.

Q. You also said "held family of James Hill as prisoners until they could obtain money."

Now, that was just plain wrong, wasn't it?

A. That's correct.

Q. That's what happened in The Desperate Hours. Isn't that the fact?

A. That's right.

Q. And all you knew at that time was what happened in The Desperate Hours?

A. Mr. Garment, when you have—

Q. Will you answer my question?

Mr. Medina: Won't you please let the witness finish an answer?

[fol. 212] The Court: Let's see if he can answer the question.

Q. Isn't it a fact, Mr. Prideaux, that all you knew when you wrote the first draft of that article was what you saw in The Desperate Hours and you didn't know anything at all about the Hill incident?

A. That is not true.

Q. In any event, you didn't know what penitentiary the criminals had escaped from?

A. That's correct.

Q. And you didn't know that they were in a house simply to hide out from a manhunt?

A. That seems to be the case.

Q. And the statement that you made was a statement referring to what took place in the play? Isn't that a fact?

A. That's true.

Q. Do you recall, Mr. Prideaux, that when I examined you about news clippings and asked your counsel to produce each and every news clipping that could be found in the entire Time, Inc. morgue, all that could be produced after a recessed session was one clipping from the general Time, Inc. morgue, that being from the New York Times for September 12, 1952? Do you recall that?

A. No, I don't recall that.

Mr. Garment: Will you concede that that is the fact?

Mr. Medina: I wasn't there at the deposition, Mr. Garment.

Mr. Garment: All right.

I read, your Honor, from the second section of the pretrial examination of Mr. Prideaux.

Mr. Medina: What page?

Mr. Garment: Page 114. And I am reading a statement that was made by Mr. Biddle here in response to a request [fol. 213] that I made at the first session to produce from the entire Time, Incorporated collective morgue any and all news clippings relating to the Hill incident.

"Mr. Biddle: I referred at the outset of this morning's testimony to the Time, Incorporated reference files on the various topics. Under the topic 'Crime' there was located a clip from the New York Times dated September 13, 1952, and the headline of that reads 'Three Escaped Convicts Seize Family, Hold Home 19 Hours To Elude Hunt,' and on the inside page is a picture of the Hill family. There is no notation or memorandum in that file as to whether or

not it was withdrawn by Mr. Prideaux. Mr. Prideaux does not remember whether he saw it or did not. That completes all the morgue files that would have been available."

Mr. Medina: Mr. Garment, you know there is a morgue file in addition to the specific file for the story.

Mr. Garment: All right, let's get to the story file.

By Mr. Garment:

Q. In the story file, Mr. Prideaux, was there a single newspaper clipping referring to the Hill incident?

A. I am not sure.

Q. It's in front of you, Mr. Prideaux.

Mr. Medina: The clippings from that file, Mr. Garment, as you know—

Mr. Garment: I would rather get this from the witness, Mr. Medina, at this point.

[fol. 214] Mr. Medina: I know. But you give him a file which contains—

Mr. Garment: Let me ask the witness a couple of questions.

Q. Mr. Prideaux, you are going through some clippings that you took out of a green envelope that was in the carbon morgue file; is that correct?

A. Right.

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(Green envelope, containing clippings, from the Time, Incorporated file, was received in evidence as Plaintiffs' Exhibit 25.)

Q. Mr. Prideaux, that folder in front of you, including that green envelope, is the story file in The Desperate Hours; is it not?

A. It's the play file, right, reviews of the play and articles about it.

Q. It is what Mr. Medina had reference to as the story file?

A. I am sure that's correct.

Q. So that there is no confusion between us as to terms.

A. Yes.

Mr. Medina: Carbon file is the term I used.

Q. Is it carbon file also; is that right?

A. (No reply.)

Q. It's whatever Mr. Medina is referring to. That is what I am getting at.

A. The term "carbon file" I am not familiar with. We are talking about this green envelope now.

Q. In any event, Mr. Prideaux, this manila folder, including this green envelope and these clippings, represents all there is with reference to the materials on The Desperate [fol. 215] Hours story that appeared in the February 28, issue of Life Magazine; isn't that correct?

A. I am not sure.

Q. Well, do you know of anything else?

A. I don't know of anything else.

Mr. Medina: I will agree that that's all we have now.

Mr. Garment: Well, we will take that up later on.

Q. What is that green envelope?

A. This green envelope is a collection of clippings pertaining directly to the play. That includes articles written about the play and reviews of the play from the New York papers.

Q. Is there a single clipping of or relating to the actual Hill incident in that file?

A. I don't believe so.

Q. There is, however, in this file all of the reviews by the New York drama critics of The Desperate Hours after it opened, isn't that right?

Mr. Medina: I object to the form of the question. The documents speak for themselves.

A. I am not sure—

The Court: The question is whether they were all of them; and the documents will not give that information.

Would you say they are all of the reviews in the New York newspapers?

The Witness: I would say not, most likely not all of them.

Q. In any event, in addition to the reviews of the play The Desperate Hours, there is one other article, and that is Defendant Hayes' Exhibit G.

A. Right.

[fol. 216] Q. And that is the article, Mr. Prideaux, in which Mr. Hayes said that The Desperate Hours was based on various news stories in California, in New York State, in Detroit, in Philadelphia—"frightened and dangerous men entered houses," and so forth. He did no research into any of these cases. The final product was different from all of the elements. Do you recall this article?

Mr. Medina: Can't we have a question that isn't a speech, your Honor? I don't think that's intelligible in the form in which it was put.

The Court: Is that the article that Mr. Hayes wrote that appeared on January 20, 1955 in the New York Times?

The Witness: Right.

Q. You recall that.

Mr. Medina: There is no question about that. You don't have to make a big thing of it.

Q. Mr. Prideaux, you had this green envelope available to you when you wrote this first draft of the article, didn't you?

A. I'm sure I did.

Q. And you read the contents of it?

A. Among other things, yes.

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Q. You say among other things. Among other things this appeared in that file?

A. No, among other material.

Q. Where is that other material?

A. I don't know.

Q. Have you made any attempt to determine where it is?

A. Certainly we have.

Q. Well, does Time, Inc. throw away news clippings?

A. Sometimes they disappear.

Q. They disappear?

A. Yes.

[fol. 217] Q. Well, we are talking about a great deal of news clippings that referred to the Hill incident. Are you telling me that all of those news clippings with the exception of one from the New York Times disappeared?

A. I am telling you we haven't found them.

Q. Have you made a real effort to find them?

A. I most certainly have.

Q. Let's talk a little bit about the Time, Inc. morgue facilities. How many floors of your building do they cover?

A. To my knowledge, one.

Q. And in 1955 how many floors did they cover?

A. That was a different building.

Q. Yes.

A. Again, to my knowledge, one.

Q. And you have in that morgue clippings, newspaper articles, other research material, relating to countless persons and events?

A. Correct.

Q. And there is a definite procedure, is there not, in Time, Inc., with respect to returning news clippings to that morgue?

A. The procedure is simply to stuff them back in the envelope and return them.

Q. Well, isn't the morgue the library of Time, Inc.?

A. In effect, yes—one of the libraries.

Q. It's a very important part of the library system of Time, Inc., is it not?

A. Correct.

Q. And every effort is made to preserve that library intact?

A. That's right.

Q. Has an investigation been made to determine what happened to all of these news clippings about the Hill incident that you have been testifying about?

A. I am sure we were asked to produce all that were available, all that could be found. There is no question about that.

[fol. 218] Q. Do you remember that an article was written about the Hill incident called "House Party" in Time Magazine for September 22, 1952?

A. I do.

Q. The point of that article was that nothing had gone wrong in the Hill household. Do you recall that?

A. Recently I saw the article, yes.

Q. Your counsel showed it to you?

A. That's right.

Q. And the entire treatment of the Hill incident in the publication of Life's sister magazine, Time Magazine, was a light treatment, was it not?

A. Indeed, it was.

Q. And it ended up with the notation that the convicts faded into the night and Mr. Hill was left wondering about his house guests. Is that right?

A. Yes, it did.

Q. And that fitted in with the heading "House Party," is that right?

A. Right.

Q. In connection with the publication of that article, Mr. Prideaux, there would have been news clippings relating to the actual Hill incident, wouldn't there?

A. I assume so.

Q. Where are they?

A. I don't know.

Q. Has anybody looked for them?

A. I am sure they have.

Q. Have they looked for that file?

A. I am sure they have.

Q. Relating to that particular article?

A. I am sure they have.

Q. And that hasn't been found?

A. Correct.

Q. Well, let's go back to the first page of your first draft. Referring to the second paragraph, Mr. Prideaux, you say there that The Desperate Hours—"Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis."

The reference is to the Hill family, is it not?

A. Right.

[fol. 219] Q. And you are saying that The Desperate Hours was somewhat fictionalized.

A. Right.

Q. Did you know how fictionalized it was?

A. In detail, no.

Q. In any detail.

A. No play has been written—do you want an answer?

* * * * * * *

Q. What did you actually know to be the correspondence in fact between the Hill incident and this dramatic, violent melodrama, The Desperate Hours, when you sat down and wrote that paragraph?

Mr. Medina: I object to the form of the question in its characterization.

Mr. Garment: I will withdraw the characterization, dramatic, violent.

Q. Between the Hill incident and The Desperate Hours when you sat down and wrote that paragraph.

A. The exact state of my knowledge on the Hill case I do not recall.

Q. You hadn't discussed it with Mr. Hayes, had you, when you were in Philadelphia?

A. No, indeed.

Q. Whatever you knew as to fictionalization you stated in that paragraph, is that right, that is, you made a reference to the fact that it was somewhat fictionalized?

A. Certainly.

Q. At this point you can't say whether you at that time thought it was a little bit fictionalized, moderately fiction-

alized or almost substantially fictionalized; is that right?

A. That's not right.

Q. Well, tell me what you can say.

A. I would say that I knew it was between a little bit and moderately fictionalized, but the heart and soul of this play was based on the true incident.

[fol. 220] Q. How did you know that, Mr. Prideaux?

A. Because I had read enough of the incident to know it. I had seen the play twice. I was completely familiar with Mr. Hayes' work. I read a fair amount on the case itself and the details. And the important—let me put it this way—the important quality of this play was, beyond doubt, provided by the Hill case, which was the case of an American family in a crisis, respected middle-class people that could be identified with by an audience. That's the heart and soul of his play.

Q. That's what you were getting at, identification, wasn't it, between your readers and a particular family?

Wasn't that the point of this article?

A. I am sorry, I don't understand.

Q. You don't understand that?

A. No.

Q. I say the point of this article was to create a sense of identification on the part of your readers with a particular real-life family.

A. No. I think that was the point of Mr. Hayes' play.

Q. Well, why do you do true life articles relating drama to true life?

A. We don't, unless there is a legitimate basis for it.

Q. Let's forget about legitimate basis. What's the editorial reason that you do it?

A. (No reply.)

Q. Isn't it to add impact and drama to the article?

A. No; it is to tell the truth about the situation.

Q. You mean to tell the truth of the actual incident?

A. It is to report on what we think happened.

Q. Well, you are reporting on a play, Mr. Prideaux, aren't you?

A. In part.

Q. And you are relating it to real life?

A. And we are reporting on the origin of the play.

Q. But the point of drawing in real life and reporting on a play in Life Magazine is, in the first place, to give a [fol. 221] news aspect to it, isn't that true?

A. It is to report the news aspect of it.

Q. Let's say that you do report the news aspect. But one of the purposes is to give a news-like quality to the report on a theatrical event. Isn't that a fact?

A. No, it is not a fact.

Q. And isn't it a fact that the purpose in relating a particular dramatic work to real life people is to add impact and drama to the article?

A. If the impact and drama comes out of reporting the truth we are very pleased.

Q. But you don't start off with that idea in mind.

A. No. We start out from the facts themselves.

Q. Well, let's talk about some of these facts again in this article. Let's go up to the first paragraph, Mr. Prideaux.

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Q. Mr. Prideaux, this article would not have taken place and the Hills would not have been in Life Magazine connected with The Desperate Hours were it not for the assumption in the first paragraph, namely, that The Desperate Hours was sparked off by the Hill incident, isn't that a fact?

A. That's a fact.

Q. And you had never, prior to writing that article, asked the author—

A. It was staring us in the face. The evidence was quite conclusive.

Q. Mr. Prideaux, you have been a writer and have worked in an editorial capacity for many, many years; isn't that true?

A. That is true.

Q. Is there any person that's better qualified to state what inspires a particular creative work than the author himself?

A. That's questionable.

[fol. 222] Q. Weren't you even curious when you were with him all that time in Philadelphia?

A. There were other things on our minds.

* * * * * * *

April 11, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

TOM PRIDEAUX, witness for the plaintiff resumed the stand and, still being under oath, testified further as follows:

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Prideaux, towards the end of yesterday's session you will recall I asked you whether it wasn't a fact that the Hills would never have been involved in this article in Life Magazine but for the assumption in the first paragraph that The Desperate Hours was sparked off specifically by their incident and you responded that that was a fact. Do you recall that?

A. I do indeed.

Q. At an earlier point you testified that your view as to the relationship between the two, namely, the incident and The Desperate Hours, derived from a feeling that the heart and soul of The Desperate Hours was supplied by the Hill incident. Do you recall that testimony?

A. That was one feeling. Yes, I do.

Q. Now, I just want to back up briefly so as to furnish a connection with the questions that will follow. Yesterday [fol. 223] you testified, in substance, that after your discussion with Bradley Smith there was a meeting with Robert Montgomery, and you had the idea at that point that there was a relationship between The Desperate Hours and an incident or incidents in real life.

A. To the best of my knowledge, yes.

Q. And then you called the press agents for The Desperate Hours, Miss Perelman and Miss Byram, spoke to one of them, asked them about the incident in Philadelphia and they said they knew nothing about it. Do you recall that?

A. That's correct.

Q. And that you then, in substance, asked them, "Well, how do I find out?" And they said, "Well, call the author." Do you recall that?

A. Yes, indeed.

Q. And then you called the author, and as you told us yesterday, you did not feel that it was necessary to ask him whether The Desperate Hours was inspired by the Hill incident.

Mr. Medina: I object to the form of that question as incorrectly stating the testimony.

The Court: I think the testimony was not that he didn't think it was necessary but he did not ask them.

Mr. Medina: He did not ask them whether it was inspired. He said that in specific language—no.

By Mr. Garment:

Q. In any event, you assumed that there was a very direct connection, that the heart and soul of The Desperate Hours was furnished by the Hill incident; isn't that correct?

A. My assumption that the heart and soul of The Des- [fol. 224] perate Hours was furnished by the Hill incident was after I had seen the play. I assumed a connection, to begin with.

Q. You assumed the specific connection to begin with.

A. Right.

Q. And then after seeing the play the assumption as to heart and soul came from seeing the play.

A. Exactly.

Q. And at no point did you feel it was necessary really to discuss this relationship in more detailed terms with the author.

A. Correct.

Q. Would it be fair to say, Mr. Prideaux, that in your capacity as a senior editor of Life Magazine for many, many years that you would take very seriously the accurate presentation of facts and the fair comment on them?

A. Exceedingly seriously.

Q. And if anything had come to your attention that raised any doubt as to these assumptions that you had made, you would then have gotten in touch with the author, wouldn't you?

A. Certainly.

Q. Now, as the entertainment editor of Life Magazine, isn't it a fact that from time to time you would read trade publications in the entertainment field?

A. Correct.

Q. And one of those well-known trade publications is Cue Magazine, is it not?

A. No.

Q. Well, in any event, Cue Magazine describes entertainment events, does it not?

A. Yes. I seldom see it.

Q. You seldom see it.

A. Right.

Q. Then let me ask you this. I read to you one paragraph from Plaintiffs' Exhibit 17, which is an interview with Mr. Joseph Hayes reported in the issue of Cue Magazine for February 5, 1955, about two and a half weeks before the Life article was published, and I ask you whether you read this interview:

[fol. 225] "The Indiana author explained that the idea for the novel came from newspaper accounts of manhunts, not any particular one, but several."

Did you read that interview?

A. To the best—

Mr. Medina: One moment. I object to the form of the question simply because you keep making speeches, Mr. Garment.

Mr. Garment: I don't think I made a speech.

Mr. Medina: Yes, you did. You said two and a half weeks before the magazine was published. The date of the magazine is February 28th. It was published February 21st.

Mr. Garment: Conceded.

By Mr. Garment:

Q. Well, that is two and a half weeks—

The Court: At any rate, did you read this article which counsel has just read from to you?

The Witness: I don't recall.

Q. You don't recall?

A. No.

Q. Do you recall not reading it?

A. I don't recall that.

Q. Now, there were a great number of people from Life Magazine who were working on that article at that time, were there not?

A. No.

Q. Well, there were persons in addition to yourself?

A. Correct.

Q. There was Miss Ecker?

A. Right.

Q. There was Miss Shevlin?

A. No.

Q. Well, she had done some work on the article?

A. As soon as Miss Ecker returned, Miss Shevlin automatically went back to her job.

[fol. 226] Q. Yes. But Miss Shevlin knew that the article was in the process of being prepared, did she not?

A. She knew.

Q. There was the managing editor, with whom you had had a layout conference; isn't that correct?

A. He knew.

Q. Would there be any other persons who knew about it?

A. (No reply.)

Q. Let me suggest a few names to you. The photo editor would have known about it, Mr. Ray Macklin?

A. He knew, indeed.

Q. Anybody else that you can think of?

A. It's hard to say who might have overheard such a thing.

Q. Did anyone of those persons call to your attention the fact that there had been a report in Cue Magazine that The Desperate Hours, the idea for The Desperate Hours, came from newspaper accounts of manhunts, not any particular one but several?

A. Not to the best of my recollection.

Q. Do you have a recollection to the contrary?

A. I have no recollection at all.

Q. You read the New York Times?

A. Usually.

Q. You read the Sunday Times?

A. Usually.

Q. And when you read it, do you read the entertainment section?

A. Usually.

Q. Well, you testified, as a matter of fact, before trial that you read the New York Times avidly; isn't that correct?

A. That's the word I used, right.

Q. And I believe you said you read the Sunday Times even more avidly. Do you recall that?

A. Correct.

Q. You recall we were talking yesterday about the article that was published in the Sunday Times for January 31, 1955 authored by Joseph Hayes?

A. I do, indeed.

Q. And that article made a number of points that the jury is well acquainted with, namely, that The Desperate Hours was based on a number of headline stories none of which were researched by the author. Do you recall that?

A. Yes.

[fol. 227] Q. Did you read that article in the Sunday Times?

A. Again, I do not recall specifically.

Q. Do you have a recollection to the contrary?

A. No, I do not.

Q. Well now, that article was published on the very day that your staff and your photographer were photographing The Desperate Hours in Philadelphia; isn't that right?

A. I didn't realize that.

Q. January 31, 1955. Does that refresh your recollection as to whether you read that article in the Sunday Times?

A. No, it does not.

Q. Well, in any event, when you sat down to write the first draft of this article, there was placed before you by your researcher this green envelope, Plaintiffs' Exhibit 25 in evidence, bearing the name of Laura Ecker in red crayon and the date February 11th, which contained clippings, is that right?

A. When I sat down to write the article—

Q. I just asked you about this envelope. This was placed before you?

A. I am answering your statement, not about the envelope. You asked me if that is correct. I would say it's not correct.

Q. That was not placed before you?

A. At the time I—may I answer freely?

Q. Yes, go ahead.

A. At the time I sat down to write that article, Miss Ecker did not come and place that before me.

Q. I understand; I am not making a point as to the actual physical event. But when you were writing the first draft of this article, you had available to you this research material, these clippings in this envelope, is that correct?

A. That and more.

[fol. 228] Q. Well, we had some discussion about the other clippings yesterday.

A. Right.

Q. Those are no longer around; is that right? Let's get that clear.

A. That's correct. They are automatically discarded periodically at Life Magazine.

Q. Thrown away?

A. Every two years.

Q. What is thrown away every two years?

A. These folders are weeded out every two years.

Q. I am not talking about the folders. I am talking about newspaper clippings. You don't throw away newspaper clippings, do you, that are part of the morgue?

A. When newspaper clippings have been used on a story they automatically go into what is known as a morgue carbon file so we have a record of what clippings were used on a particular story. After an interval of time the morgue carbon files are thinned out.

Q. Isn't it the procedure at all of the Time, Incorporated publications for the clippings which bear the stamp "Morgue" and the indication as to the newspaper from which the clipping came, to have that clipping returned to the morgue, the library of the magazine, after it is used?

A. Not invariably.

Q. Not invariably?

A. No.

Q. Well, what procedure is there? Is there some procedure that the various personnel are supposed to follow or is it left to the discretion or whim of each individual?

A. It is not left to the discretion or whim of each individual. There is a general policy about that.

Q. What is the general policy?

A. The policy is when a carbon file, which includes the carbon papers that you have seen here, it also includes some research that is used on the story, has been returned to the [fol. 229] file, after a period of time a good deal of the research is thrown out. The same happens with photographs. Otherwise they would bust out of the building.

Q. Mr. Prideaux, the newspaper clippings represent history of the news, do they not?

A. That's right.

Q. And the business of Time, Incorporated is news, is it not?

A. That's correct.

Q. And the library of Time, Incorporated is a library of the history of the news, is it not?

A. The library has microfilm also.

Q. Have you checked the microfilm to determine whether these clippings were placed on microfilm when the actual clippings were thrown away?

A. The clippings are never placed on microfilm, the newspapers are.

Q. Then there is no point in referring to microfilm. I am talking about clippings at this point. Do you say that newspaper clippings that reflect the history of events are thrown away haphazardly?

A. Not haphazardly, but they are discarded.

Q. Do you mean they are discarded deliberately?

A. Certainly not.

Q. Well all right, Mr. Prideaux, in any event, there was available to you on that date in this green envelope furnished to you by your researcher the article written by Joseph Hayes telling about the writing of The Desperate Hours. Isn't that right?

A. To the best of my recollection it was included in the material.

Q. Did you read it then?

A. I can't recall.

Q. Did you read anything in this envelope?

A. I read a great deal of material.

Q. Did you read anything in this envelope?

A. That I can't recall.

[fol. 230] Q. Did you read the reviews—

A. I have no recollection—

Q. —let me finish—did you read the reviews by the New York critics of The Desperate Hours?

A. Again I do not recall.

Q. Well, let me try two or three on you and see if they help refresh your recollection.

I read to you from a clipping bearing the red stamp February 11, 1955, which is in Plaintiffs' Exhibit 25, by John Chapman in the Daily News: "Not since mobsters Ross Hertz, Tom Fadden and Humphrey Bogart held as prisoners Leslie Howard and all the other innocent people they found in a lunchroom in 'The Petrified Forest' has there been as ruthless an invasion as there is in Joseph Hayes' play 'The Desperate Hours.'"

Do you recall reading that review?

A. No, I do not.

Q. I read to you the first two paragraphs from the review by William Hawkins in the New York World Telegram & Sun:

"'The Desperate Hours' is a melodrama that frankly sets out to pulverize your nerves. Before it is over, it does just that. And it also does the same thing to the nerves of most of its characters.

"In this Barrymore Theatre presentation Joseph Hayes has played a variation on a classic thriller theme. Three escaped criminals sneak into the quiet home of an innocent family and set up a siege."

Do you recall reading that?

A. No, I do not.

Q. I read a clipping to you from Exhibit 25, the review of Walter F. Kerr, in the New York Herald Tribune of The Desperate Hours:

[fol. 231] "Suburban Jungle.

"As slam-bang melodrama, with a glowering figure behind every door and a nervous finger on every trigger, 'The Desperate Hours' is a beaut. Joseph Hayes has made a lightning-paced thriller out of his novel about an ordinary household invaded by killers, and while the material isn't exactly new—a couple of films, 'He Ran All The Way' and 'Suddenly,' come to mind—the author has worked out a dozen or so breath-taking twists on it."

Do you recall reading that?

A. No, I do not.

Q. You don't recall any of these clippings?

A. Mr. Garment—

Q. Just one second, Mr. Prideaux. I am conducting an examination. You will have an opportunity to say anything you want on examination by your own counsel.

Did you ever hear of a movie called "Blind Alley"?

A. Yes.

Q. Which was also produced as a play and then again as a movie called "The Dark Past."

A. I don't recall "The Dark Past." I recall "Blind Alley."

Q. Do you recall that in general "The Blind Alley" involved an escaped convict killer who, with two accomplices, takes over the home of a doctor and his wife, and I believe there were children involved, also? Do you recall that?

A. I recall the outline of the story, yes.

Q. In the story they have to wait until the money arrives or a boat arrives for a getaway. Do you recall that?

Mr. Medina: One moment. I object to this line of questioning. If he has some other things to offer, let's put the play in.

[fol. 232] The Court: I will permit it.

Overruled.

Q. Did you have that in mind when you came to the conclusion, the assumption, that the heart and soul of The Desperate Hours was the story of the James Hill family?

A. Yes, I did.

Q. It raised no question in your mind about this being a classical fictional theme?

A. Not at all.

Q. There was reference by Mr. Hayes yesterday to a review of The Desperate Hours by Mr. Wolcott Gibbs in the New Yorker Magazine. You were present in court and heard Mr. Hayes make reference to that review, were you not?

A. Yes.

Q. Do you, from time to time, read the New Yorker Magazine?

A. Yes.

Q. Did you, during that period, read the reviews by the drama critic in the New Yorker Magazine?

A. Usually.

Q. When was this article actually—I believe Mr. Medina said the Life article was published on February 25th.

Mr. Garment: Is that right?

Mr. Medina: No, I said the 21st.

Mr. Garment: Published on February 21st and bearing the date February 28, 1955.

Mr. Medina: The issue of Life at that time bears the issue date of the week following its publication. So that for an issue bearing the date February 28th it would be out on the newsstands commencing February 21st—at least en route—and it would have been printed several days prior to February 21st.

[fol. 233] Q. In any event, Mr. Prideaux, there was nothing that came up during any of this period that you recall that raised any question in your mind about this basic heart and soul relationship between The Desperate Hours and the Hill incident?

A. No, indeed.

Q. Isn't it a fact, Mr. Prideaux, that you knew from the very beginning that The Desperate Hours had no relationship to the Hill family other than that a family in Philadelphia was held hostage by escaped convicts?

A. That is emphatically not true.

Q. Isn't it a fact that you couldn't have cared less as to the relationship between the two?

A. Emphatically not true.

Q. Isn't it a fact that it just happened that the play was opening in Philadelphia and that it was convenient to move the actors from The Desperate Hours into the Hill home and take pictures there for your article, and that's why this article appeared using the name of the Hill family?

A. That is equally untrue.

Q. And isn't it a fact that you couldn't have cared less what the facts were when you sat down to write that first draft?

A. Untrue.

Q. Now, Mr. Prideaux, apart from this business of sparking off or inspiring the text, of the first draft, it then goes on to get a little bit more specific about the relationship between The Desperate Hours and the Philadelphia home involved in this Philadelphia horror story. Is that right?

A. Correct.

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Q. Now, you told us yesterday that you knew there was a certain amount of fictionalization in The Desperate Hours in terms of its relationship to this Hill incident. Is that right?

A. I don't recall telling you, but it's true. I did know.

[fol. 234] Q. You said that you weren't sure whether it was moderately fictionalized or a little bit fictionalized—

A. Right.

Q. But you knew it was fictionalized?

A. To some degree.

Q. And you put that down in the first draft?

A. That's correct.

Q. "—somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis."

A. Right.

Q. The sole reference to the Hill name in the first draft was in the caption to one of the photographs.

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A. Correct.

Q. And that's where you said the "Actual event in 1952 —took place in isolated house—where three convicts from Koming Penitentiary held family of James Hill as prisoners until they could obtain money."

The Court: There is no question about that. The exhibit is in evidence.

Q. You told us yesterday that this first draft, typed up to reflect your changes, was then distributed to various persons, including the copy editor, Mr. Kastner, and your researcher, Miss Ecker.

A. Right.

Mr. Medina: I object to the form of the question as repetitive.

Your Honor, Mr. Garment keeps doing this time and time again and shifting a little emphasis as to what the evidence was.

The Court: This has all been covered in the testimony yesterday. We have in evidence the different exhibits that were sent to the different people.

[fol. 235] Q. Now this paper that we are looking at that is now on the easel is a blow-up of the first page of Exhibit 22 in evidence here, is it not?

A. Yes.

Q. And that is the copy that went to Miss Ecker, your researcher.

A. The first copy, right.

Q. Would you explain to the jury what those check marks are that appear over each of the words.

A. Yes, indeed. It is customary when a researcher is checking on a piece of material to put a dot over every word, testifying to the truthfulness of that word. The researcher, in the course of the story, may get two or three different versions of the same story. She begins, in order to gain time, on the first version that comes through and does as much checking as she can and carries on with the subsequent copies that are given to her.

Q. What is the difference between the red checks and the plain pencil checks?

A. Names.

Q. In other words, names are checked with a red indication and other words bear a simple pencil check?

A. The spelling of names, yes. They are trickier, more difficult.

Q. And the use of a red check mark is designed to make sure that there is no error with respect to the spelling of any names.

A. That's correct.

Q. I notice that there is a question mark next to the whole first paragraph. Do you know who put that question mark there?

A. No, I don't. I could make a speculation, if you want me to.

Q. Give me your most reasonable belief as to who put that question mark there.

A. I would think that Miss Ecker did.

Q. I also note that there is a question mark over the fourth word in the first sentence of the second paragraph. Is that right?

A. Yes, that's right.

[fol. 236] Q. And that word is "somewhat" before the word "fictionalized."

A. Correct.

Q. And would it be your best recollection or belief that Miss Ecker also placed a question mark over the word "somewhat"?

A. Indeed it would be.

Q. Is it fair to say that a question mark was being placed over the word "somewhat" to draw to your attention the fact that The Desperate Hours was or might be completely fictionalized?

A. Not to draw to my attention.

Q. Well, was it done to draw it to anybody's attention?

A. It was to draw to her own attention.

Q. Then wouldn't she draw it to your attention?

A. No.

Q. What is her function as a researcher?

A. Her function is to ascertain facts.

Q. And not draw them to anybody's attention?

A. At a later stage of the process, yes.

Q. Well, ultimately to draw them to your attention?

A. Ultimately, certainly.

Q. Was that drawn to your attention?

A. It must have been.

Q. Do you have any recollection?

A. No.

Q. Now, this next page, Mr. Prideaux, is the first page, is it not, of Exhibit 21?

A. That's right.

Q. And that would be the copy of your first draft that went to Mr. Kastner, the copy editor; is that right?

A. That's correct.

Q. And just for a moment or two, Mr. Prideaux, I want to ask you a few questions about Mr. Kastner. How long has Mr. Kastner been with Time, Incorporated?

A. I can't tell you exactly—many years, long before I was.

Q. Let me tell you exactly. Isn't it a fact that he started with Time, Incorporated in 1924?

A. I told you I can't answer that.

[fol. 237] Q. Do you know that he was employed in the first instance by one of the original co-founders of Time, Incorporated, Britton Hadden?

A. I think I recollect that.

Q. Mr. Kastner was on the original masthead of Life Magazine when it was first published in 1936, was he not?

A. Yes.

Q. And he has been one of the supervising editors, senior to yourself and all other department editors, for many years, has he not?

A. Correct.

Q. And Mr. Kastner's function is to copy edit so as to give a consistent tone to the articles that appear in Life Magazine from the point of view of style and language; is that right?

A. Right.

Q. And that's a very important consideration, is it not, among all of the publications of Time, Inc., style, language?

A. I would say it is a consideration.

Q. It is the usual and ordinary procedure and it was the usual and ordinary procedure for you to sit down with

Mr. Kastner and discuss the copy editing of your first drafts after they were submitted to him, was it not?

A. Usually.

Q. Usually?

A. Right.

Q. Almost invariably. Wouldn't that be true?

A. Usually.

Q. Well, it would be with Mr. Kastner or some other copy editor?

A. That procedure varies.

Q. In any event, you sat down with Mr. Kastner in connection with this article?

A. I don't recall that. It seems likely.

• • • • • • •

Q. Mr. Prideaux, isn't it your best recollection that you and Mr. Kastner discussed the various changes that were being made in your first draft of this article?

A. I don't recall.

[fol. 238] Q. You have no recollection at all?

A. I don't literally recall.

Q. Maybe this will refresh your recollection, Mr. Prideaux, at page 122 of your deposition:

"Q. Mr. Prideaux, would you tell us something about the copy writing process after the draft is furnished to the copy editor?

"A. Most always in every case it is done with the copy editor and myself working together in the same place. Editing changes may be written into the story by him or by me. And by editing changes being written, I mean the literal writing thereof. The editing changes are usually determined by the copy editor himself.

"Q. Then all of the handwritten changes appearing on the copy given to Mr. Kastner were made either by you or Mr. Kastner in the presence of both of you?

"A. Correct."

Does that refresh your recollection now that you and Mr. Kastner sat down and made these changes together?

Mr. Medina: That wasn't the question you asked.

You asked whether there was any discussion.

The Court: The question was did he talk to Mr. Kastner. He said he didn't recall. Let's not waste any time.

Does that refresh your recollection?

I think the witness is shaking his head. He says it does.

The Witness: Yes.

Q. In the first instance Mr. Kastner struck out part of the first sentence. Do you recall what, if anything, he said in that connection?

A. No, indeed.

[fol. 239] Q. Did he indicate to you in words or substance that he disagreed with your approach to this article?

A. I don't recall.

Q. Didn't Mr. Kastner say that the article as drafted by you was not newsy enough?

A. I have no recollection of that.

Q. Well, let's pass that for a moment. Do you have any recollection at all at this point, any idea at all, why Mr. Kastner struck out part of that first sentence?

A. I have no specific recollection. I can give you a guess.

Q. Give me your best recollection.

A. I have no recollection.

Q. I don't want you to guess about anything, Mr. Prideaux.

Wouldn't you say, looking at that first paragraph, that Mr. Kastner by drawing his pencil through those first two lines indicated, whether he said so or not, that the approach was wrong?

A. Not necessarily.

Mr. Garment: Page 128:

Q. "Q. Do you recall any particular circumstances that led to the rewriting of that first paragraph?

"A. None whatsoever. I can reconstruct it to you by imagination, but I recall no circumstances.

"Q. Would you reconstruct for me as best you can.

"A. I think perhaps the copy editor felt I was not getting into the story fast enough and chose a different be-

ginning; in other words, I was making the author the lead subject, and I think he felt that that was not a newsy enough beginning."

Do you recall that Mr. Prideaux?

A. No, I don't recall, but obviously it's there.

[fol. 240] Q. Well, then, Mr. Kastner, whether he said so or not, went down beyond the first paragraph and then after a change, inserting the words "The play," and so forth, ran his pencil through "somewhat fictionalized but." You see that, do you not?

A. Yes, indeed.

Q. Do you recall any discussion about his striking out "somewhat fictionalized but"?

A. I do not recall.

Q. Did you protest to him when he struck that out?

A. I do not recall.

Q. Did he ask you what the relationship was between The Desperate Hours and this Hill incident?

A. I recall no conversation at that time.

Q. Mr. Prideaux, by striking out "somewhat fictionalized," Mr. Kastner was making this a statement that The Desperate Hours was an account of how the Hill family fared in this real-life incident; is that not true?

A. Not necessarily.

Q. Well, aren't you very careful at Life Magazine about the use of language such as "somewhat fictionalized—frankly fictionalized—partly fictionalized," and so forth?

A. We are careful about language.

Q. Well, don't you make it a point in article after article to indicate what the relationship is between a work of fiction and a true-life event when you go into this kind of true-life coverage?

A. We do.

Q. Well, don't you have any recollection at this point as to why that was stricken out and what, if anything, you said about it?

A. I have testified that I have no recollection.

Q. Don't you recall even protesting that?

A. No, I do not.

Q. Mr. Prideaux, two weeks before this article appeared —and I am referring to the issue of Life Magazine for [fol. 241] February 14, 1955—there was another true-life drama article, was there not?

A. I don't recall.

Q. Mr. Prideaux, wasn't that a true-life drama article that appeared as the leading article in Life Magazine?

A. I do not recall.

Q. Did you write the review or have any hand in the review of Anastasia?

A. Yes, the issue that it was in was what confused me. I don't recall what issue it was.

Q. Do you recall that that appeared as the leading article, event of the week, in Life Magazine?

A. Yes, indeed.

Q. Had that ever happened before?

A. Had what ever happened?

Q. That a drama review appeared as the leading article in Life Magazine in the section usually reserved for affairs of state—if you recall?

A. I don't think so.

Q. That was a very unusual event, was it not?

A. Yes.

Mr. Garment: Before discussing this article, your Honor, I think it would be appropriate to offer it in evidence.

Do you want to look at it, Mr. Medina?

(Handing magazine to Mr. Medina.)

Mr. Medina: No objection.

(The issue of Life for February 24, 1955 received in evidence as Plaintiffs' Exhibit 26.)

By Mr. Garment:

Q. Mr. Prideaux, this article was a review of the play Anastasia.

A. Right.

Q. Is that correct?

A. Yes, that's correct.

[fol. 242] Q. And the true life theme was set by the headline "Is This Princess Alive?" Is that right?

A. Yes.

Q. And on the next five pages there is a discussion both of the play and of what was actually known about the actual Anastasia?

A. That is true.

Q. Now, very briefly, the actual Anastasia was one of the daughters of the Czar, about whom a legend had grown up that she survived the execution of the royal family; is that right?

A. As I recall it, yes.

Q. And there was a woman who for many years had claimed to be the true Anastasia; is that right?

A. As I recall it.

Q. And she had been involved in many proceedings, legal proceedings, in other words, in an attempt to establish that she was the real Anastasia?

A. As I recall.

Q. And as you noted on the fourth page of this article under the headline "The Princess as a Pauper," she had never been able to satisfy any judicial tribunal that she was the actual Anastasia; is that right?

A. I believe so, yes.

Q. And Life arranged to have somebody take photographs of Mrs. Von Heydebrand, who claimed to be Anastasia, in Germany, did it not?

A. In Europe, probably in Germany. I just don't recall.

Q. And she collaborated fully in that article; did she not?

A. I can't answer that.

Q. And she had also sold or had participated in some arrangement with the producers of the play and the motion picture whereby she was to receive money from them in connection with the play and movie Anastasia; is that right?

A. My recollection of the details is hazy on that.

Q. Well, that appears right in the text on the first page of your article, all of those details.

[fol. 243] Mr. Malino: I don't like to interrupt, but I would like to have it made clear to the jury that Mr. Garment is making no claim on behalf of Mr. Hill as against The Desperate Hours Company as to participating in that picture.

Mr. Garment: Of course not.

Q. That article was prepared with a great deal of care and concern as to the documentary facts of the actual princess, Anastasia; is that right?

A. I believe so.

Q. Photographs were obtained and published, were they not?

A. Yes, they were.

Q. Research was conducted into the details, such as were known to exist, about the actual Anastasia before she vanished into legend to come out as this claimant, Mrs. Von Heydebrand; is that correct?

A. That's correct.

Q. And in the text of that article about the play Anastasia, you make careful reference to the fact that this was —and I quote—"a frankly fictional account of how Anastasia runs afoul of Slavic scoundrels," and so forth.

A. Yes.

Q. There are other articles, true life articles, in which Life has been very, very meticulous about indicating the extent of fictionalization when dealing with public figures who make claims to publicity; isn't that right?

A. It seems reasonable.

Q. But in relation to the Hill family, about whom you knew nothing at all, you sat by while the words "somewhat fictionalized" was struck out of that article, and you have no recollection now of having protested.

A. No, I do not.

The Court: We will suspend at this point.

(A luncheon recess was then declared.)

[fol. 244] AFTERNOON SESSION

TOM PRIDEAUX, a witness for the plaintiff, resumed the stand and, still being under oath, testified further as follows:

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Prideaux, just before we adjourned for lunch we were talking about the practice of your department through the years to use precise words to convey precise meanings and, in particular, we discussed the use of the term "frankly fictionalized" in the Anastasia story that preceded the story of The Desperate Hours by two weeks. Do you recall that?

A. Right.

Q. Just by way of two further examples of this procedure, I show you the review of The Winslow Boy at page 97 of the issue of Life Magazine for November 24, 1947, and ask you whether you recall that.

Mr. Medina: I object to the form of the question simply because of the introductory remark, which characterized the manner.

The Court: You can ask about that, if he recalls it, and if you want to offer it in evidence, all right.

By Mr. Garment:

Q. Do you recall it?

A. Yes.

Q. Did you write that review?

A. Yes.

Q. That was the review of—

Mr. Garment: Withdrawn.

Your Honor, I offer that in evidence.

Mr. Medina: No objection.

[fol. 245] (Issue of Life Magazine for November 24, 1947, received in evidence as Plaintiffs' Exhibit 27.)

Q. Very briefly, Mr. Prideaux, The Winslow Boy was a play based upon a very well known English case, namely, The Archer-Shee case?

A. That's right.

Q. There was never any question in anybody's mind about the Archer-Shee case having been the inspiration for The Winslow Boy and the basis for that play?

A. Right.

Q. And you noted, nevertheless, in that article that the author created some fictional embellishments.

A. Right.

Q. I show you a review of a motion picture called They Were Expendable in December 31, 1945 issue of Life Magazine, appearing at page 61, and ask you whether you recall that review?

A. No, I don't.

Q. Well, that review was by your department, was it not?

A. I was not the head of the department at that time. There was a change of position completely. I had just returned from the Army—you want me to explain?

Q. No, it is not necessary. At any rate, that article appeared in that issue of Life Magazine?

A. Obviously.

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(The issue of Life Magazine for December 31, 1945, was received in evidence as Plaintiffs' Exhibit 28.)

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Q. I understand from your testimony, Mr. Prideaux, that you did not participate in the preparation of this review.

A. That's correct.

Q. However, would you read the text of that review and would you agree with me that it is fair to say that Life Magazine was careful to draw the distinction between fact [fol. 246] and fiction in the case of They Were Expendable and to make its precise editorial point in precise editorial language?

Mr. Medina: I object to the form of the question, your Honor. It speaks for itself.

The Court: No. This man has been in this field for many years and he is an expert on this, and this is something that might not be perfectly obvious to the jury.

I will permit it. Overruled.

A. Yes, I have read it.

Q. Would you like the question read back?

A. Yes.

(The reporter read the previous question.)

A. Yes.

Mr. Garment: With your Honor's permission, I will read just the text of this review to the jury:

"Movie of the Week:

"They Were Expendable.

"Robert Montgomery returns to the screen in the story of Lieutenant Bulkeley's Valiant PT boats.

"Since the end of the war, Hollywood's moguls have lengthily and anxiously debated their chances of profitably making any more war pictures. This month a test case, in the form of They Were Expendable, goes to judgment at the box office. Since its director, Captain John Ford, USNR, has expertly adapted William L. White's book and since the picture provides an excellent performance by one of Hollywood's returning old hands, Commander Robert Montgomery, just out of the Navy, Expendable may tip the scales in favor of further war movies.

[fol. 247] "An atmosphere of quiet courage pervades this account of a handful of battered PT boats fighting doggedly

against overwhelming enemy forces in the Philippines. The battle scenes, shot with real motor torpedo boats at Key Biscayne, Florida, are spectacular, although Navy veterans will have no difficulty spotting the miniature Jap cruisers and the other necessary fakes.

"Movie goers will notice, however, that They Were Expendable changes the names of the principal heroes, Lieutenants John Bulkeley and Bolling Kelly, to Brickley and Ryan. One possible reason is that the movie repeats almost verbatim a story of dubious accuracy told in White's book: the 'romance' between Kelly and a Corregidor Army nurse named Peggy. Kelly, now married to another girl, thinks White built up the romance a little; Peggy, who in real life is Lieutenant Beulah Greenwalt told LIFE, "We were just good friends on the Rock. I haven't seen him since . . ."

Q. Mr. Prideaux, would you examine this list and tell me whether that would appear to be a list of true-life reviews of various dramatic productions, that is, true-life type reviews of movies and plays that appeared in Life Magazine during the ten-year period prior to the publication of The Desperate Hours (handing paper to witness).

A. I don't understand your question.

. . . . . .

A. I can tell you, sir, right now, without recalling the specific content of each Life Story—

Q. That's all I am asking for.

A. Which I can't do.

[fol. 248] Q. I am not asking you to do that. I am asking you whether those stories appeared.

. . . . . .

By Mr. Garment:

Q. Mr. Prideaux, would you just read through that list. It would take you a moment.

A. To the best of my recollection—this, again, involves memory—there was a true-life incident behind all of these

pictures mentioned, to some degree. To what degree I can't say. And, again to the best of my recollection, all of these items appeared in Life.

The Court: All of them what?

The Witness: All of them appeared in Life.

* * * * * * *

(The list of articles appearing in Life, referred to, was received in evidence as Plaintiffs' Exhibit 29.)

Q. Mr. Prideaux, before we come back to the article itself, there are just one or two points that I want to get clear.

This morning and yesterday I asked you a number of questions relating to events that took place quite some time ago; is that right?

A. Right.

Q. The lawsuit, you recall—if you do recall—was started approximately six or seven months after the publication of the article.

A. I didn't know that.

Q. Wasn't that called to your attention at or about the time the summons and complaint were served upon the defendant Time, Inc.?

A. I truly don't remember that.

[fol. 249] Q. But there did come a time when you were notified about it and discussed the matter with counsel?

A. Yes.

Q. There did come a time when you discussed the matter with your various associates on Life Magazine?

A. Right.

Q. Including those who were involved in the preparation of this article?

A. That's correct.

Q. And that would include Miss Ecker; is that right?

A. Right.

Q. Miss Addison?

A. To a lesser degree.

Q. Mr. Kastner?

A. To a lesser degree.

Q. And Mr. Thompson, of course, the editor-in-chief?

A. I don't recall that.

Q. You don't recall ever having any discussion with him about this lawsuit?

A. No, I don't—not at that time.

Q. But since that time, of course, the matter has been discussed by you and these other three editors—that is, Mr. Kastner and Mr. Thompson, rather; is that right?

A. Since that time, yes.

Q. And, of course, you were examined before trial about two years after the article appeared?

A. By deposition, yes.

Q. Let's come back to this exhibit here. These changes that appear on the first page of the draft which went to Mr. Kastner are all in Mr. Kastner's handwriting, are they not—except possibly "an average"?

A. I think that's my handwriting.

Q. However, "The play—"

A. I think that's mine.

Q. How about "Hills"?

A. I think that's mine.

Q. Look at the original exhibit before you.

A. You see, I think "The play" is Mr. Kastner's. I think the word "during" is mine. I think the deletions are Mr. Kastner's, and I think "Hills" is mine.

[fol. 250] Q. That would certainly refresh your recollection that these changes were made by you and Mr. Kastner in each other's presence?

A. It should, and it does.

Q. After that first part was struck out and as a result of your meeting with Mr. Kastner, did you prepare a new first paragraph?

A. I don't recall whether I prepared it or whether Mr. Kastner prepared it.

Q. Now, Mr. Prideaux, this gets quite close to the text of the first paragraph of the Life article as it actually appeared?

A. Right.

Q. And by this paragraph the Hills and their relationship to The Desperate Hours was made the first paragraph of the article; is that right?

A. Correct.

Q. Whereas in your original draft the James Hill name appeared only as a caption to a photograph?

A. The first caption, yes.

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Q. I wonder if you could—the handwriting might be a little obscure—I wonder if you could read that revised first paragraph including the handwriting changes.

A. "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes' novel, The Desperate Hours, inspired by the family's experience. Now they can see it reenacted in Hayes' Broadway play based on the book, and next year will see it in his movie, which has already been filmed but is being held until the play has a chance to pay off."

Q. What is your best recollection as to who typed the revision of the first paragraph before the handwritten changes were placed there?

A. I don't recall who typed it. But from the evidence [fol. 251] of what I see here, I think I typed it.

Q. And then you went back in to Mr. Kastner who then copyedited it with the various handwritten notations; is that right?

A. That's right.

Q. Now I wonder if you could tell us what that blow-up represents, Mr. Prideaux (indicating). I might draw to your attention that it is the first page of Plaintiffs' Exhibit 24. But tell us what it is in relation to the preparation of this article.

A. Yes. This is the original, what we call white copy of the article which I submitted—the original copy which I

submitted to Mr. Kastner. It was never retyped. Changes were made on the copy, as you can see, and Mr. Kastner's initials, which are normally put on the yellow copy that goes to him personally, were transferred to this copy, and the managing editor's initials were added and it became the printer's copy.

Q. And the remaining pages of that exhibit similarly represent the final or close to final verson of the article with the approval initials of Mr. Kastner and "EKT"—that would be Mr. Edward K. Thompson, the editor in chief of the magazine, is that right?

A. That's right.

Q. I notice that there are certain typewritten insertions, "Lewisburg" instead of "Koming Penitentiary," "While they hid from the manhunt" instead of "until they could obtain money," and so forth.

A. That's right.

Q. Those details were supplied by the researcher, were they not?

A. Yes.

Q. Some time after you had prepared your original draft of the article?

A. It depends upon what you mean by some time.

Q. After.

A. After, yes.

[fol. 252] Q. Let me ask you this, Mr. Prideaux. In your original draft of this article, you inserted a running head on the second and third pages, did you not?

A. No.

Q. I draw your attention to the typewritten matter "Desperate Hours."

A. I am mistaken. I can explain that to you if you would like to know.

Mr. Medina: To what page are you referring?

Mr. Garment: I am referring to the second page of Exhibit 20.

Q. You said you wanted to explain something to me. Go ahead, Mr. Prideaux.

A. There is a general rule at the magazine that the writer should not attempt to use a carry-over title. A carry-over title is something that briefly identifies what the story is about. Am I being clear?

Q. Yes. But let's get it a little bit clearer. You say the writer. You are referring to yourself?

A. I am referring to myself or any writer.

Q. Well, you are also an editor of the magazine.

A. That's right.

Q. In the initial draft, whether or not it conformed to established policy or not, you typed in as the running head, "Desperate Hours," did you not?

A. I did.

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By Mr. Garment:

Q. In Life Magazine, the first page generally carries the indication of the department, "Theater," for example?

A. Usually.

Q. And the running head is an indication of the subject matter of the article?

A. It identifies the article, right.

[fol. 253] Q. And it identifies the basic subject matter of the article; is that correct?

A. It's strongly related to it, yes.

Q. For example, if your Nature department were doing an article on birds, the first page would show "Nature" as the department name; is that correct?

A. That's right.

Q. And the second page would have the running head "Birds," is that correct?

A. No. May I explain?

Q. Well, I am offering a specific illustration. I drew that illustration from the magazine itself. I am simply trying to have this point illustrated, Mr. Prideaux.

A. I will be glad to help.

Q. I draw your attention to page 30 of Exhibit 10. There is an article about a snowbound meadow lark under the heading "Nature"; is that right?

A. We don't call this a heading. This is the headline—

Q. I mean the department.

A. The department is identified in a rather inconspicuous way, small type, in other words.

Q. And the following headline was "Birds"?

A. That's right.

Q. Indicating that the article was about birds?

A. That's right.

Q. That's all I was getting at.

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Q. Somewhere along the line the running head for this article was changed, was it not?

A. Right.

Q. And it became changed to what?

A. As I recall, it became changed to "True Crime."

Q. From "Desperate Hours."

A. Right.

Q. After all of the revising was completed and the article finally appeared, Mr. Prideaux, was there anything in the text of that article or in the photographs or captions to [fol. 254] make clear or to suggest that The Desperate Hours was anything but a dramatic portrayal of the James Hill family and the events in which that family was involved in September 1952?

A. Yes.

Q. You are referring to a specific word or words?

A. Yes.

Q. And that word is what?

A. That word is "inspires."

Q. Now, Mr. Prideaux, the article starts off with the statement, "True Crime Inspires Tense Play."

A. In the headline.

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Q. All right, Mr. Prideaux, you will agree with me that the word "inspires" can have a number of meanings; is that right?

A. Many meanings.

Q. It can mean that a particular work was sparked off by a particular event; is that correct?

A. I think, upon more thought, that the word "inspires" connotes something a little more having to do with inspiration than sparked.

Q. Well, all right, let's put it that way. But the point I am getting at is this, Mr. Prideaux: When you say that something inspires a novel or a play, you don't necessarily say that the play is the story of the event.

A. Not necessarily.

Q. There are instances where a particular person or event has inspired a dramatic work; is that right?

A. Right.

Q. And the work was then a complete work of fiction; is that right?

A. I wouldn't say that.

Q. Well, let's talk about Anastasia. That was inspired by the Anastasia legend, wasn't it?

A. Right.

[fol. 255] Q. And you said it was frankly fictionalized.

A. I didn't say it was a complete work of fiction. That's very important.

Q. All right, substantially a complete work of fiction.

A. I would say—substantially a complete work of fiction does not describe Anastasia.

Q. Mr. Prideaux, when you say frankly fictionalized in relation to Anastasia, do you have in mind what in Anastasia was confirmed by any known verified fact?

A. My recollection of the facts of Anastasia, I am frank to confess, is rather hazy now.

Q. Isn't the point that was made in your article about Anastasia that it was a take-off starting with the legend and then was a frankly fictionalized dramatic story?

A. As I recall Anastasia and recall my article, we pointed out that the background or the exposition for the play was based on the best facts anybody could have, and the play itself made a great deal of the exposition of the background. However, the play at that point took on on its own steam, so to speak.

Q. So far as the world knows, so far as anybody has proved anything, the actual real-life Princess Anastasia died along with the other members of that family when the Czar's family was assassinated; isn't that a fact?

A. I can't tell whether that's a fact.

Q. Well, you said so in the article, that her claim had never been proved.

A. In 1955. I don't recall.

Q. All right, Mr. Prideaux. I don't want to get into too much of an argument about specific words here. On the other hand, there are works of fiction which are inspired by real-life events and hew closely to those real-life events; is that right?

A. I think there are, yes.

Q. I will give you an example from Life Magazine.

[fol. 256] "Compulsion" is known to hew closely to the events of the Leopold-Loeb case?

A. Yes.

Q. And to be inspired by it?

A. I would say that's practically a documentary.

Q. You said in Life Magazine, did you not, that "Compulsion"—supposedly only inspired by the Leopold-Loeb case—in fact hews fairly closely to the facts?

A. I don't recall what we said in Life on that.

Q. I will show it to you to refresh your recollection.

Mr. Garment: I offer in evidence the issue of Life Magazine for April 13, 1959.

Mr. Medina: No objection.

(The issue of Life for April 13, 1959 was received in evidence as Plaintiffs' Exhibit 30.)

Q. Mr. Prideaux, I show you page 60 of Exhibit 30, particularly the sentence, "The plot supposedly only inspired by the original case"—that is, the plot of "Compulsion"—"supposedly only inspired by the Leopold-Loeb case, actually hews closely to the real events."

A. Yes.

Q. Does that refresh your recollection? Well, in any event, it appears in the magazine.

A. Yes.

Q. Again that's another example of the precise use of language by Life Magazine to make its editorial points in clear English.

A. Right.

Q. Well now, in your article you start off with the basic premise that The Desperate Hours was specifically inspired by the Hill incident; do you not?

A. That's correct.

Q. And then we go on then to the second feature, which would be the extent of the actual connection between the purported source of inspiration and the dramatic work; is that right?

A. I don't understand the question.

[fol. 257] Q. Well, after the general heading "True Crime Inspires Tense Play," under the headline of the Whitemarsh incident and the picture of the house, you then go on to say: "The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours.'" Now you are beginning there, in that subheading, to get closer in your description of the relationship between The Desperate Hours and the Hill incident beyond that of "inspires." Isn't that a fair statement?

A. That's correct.

Q. What was your original statement or subheading which now in the final appears as "The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours,'" and I direct your attention to the last page of Exhibit 20.

A. "Case of a family trapped by convicts moves author to write novel, movie and now a Broadway thriller."

Q. That was changed somewhat along the line in the editing process.

A. That's right.

Q. By whom?

A. I assume Mr. Kastner.

Q. Do you recall who it was?

A. No, I don't. I can only assume.

Q. Getting to the text of the article, Life then describes specifically the relationship between the Hill incident and The Desperate Hours beyond that of inspiration, does it not?

• • • • • • •

A. Life uses the word "ordeal." If that's a specific word, then it describes it specifically.

• • • • • • •

Q. In the first sentence you state: "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners [fol. 258] in their own home outside Philadelphia by three escaped convicts."

In the second sentence you say: "Later they read about it in Joseph Hayes' novel 'The Desperate Hours,' inspired by the family's experience."

Now "Later they read about it," is a reference to the experience, the desperate ordeal of the James Hill family, is it not?

A. That's right.

Q. And in the following phrase "Now they can see the story reenacted in Hayes' Broadway play based on the book"—"The story that they can see reenacted," according to Life, is the story of the James Hill family. Isn't that what you intended to convey?

A. No. I think it's the story of the novel which, in turn, was inspired by the family.

Mr. Garment (Reading from deposition): At page 109—

"Q. The reference to 'Later they read about it' is a reference to the desperate ordeal of the James Hill family; is that right?

"A. In essence.

"Q. Subsequently, through that descriptive material, the reference is to the story reenacted in Hayes' Broadway play, which is the story of the Hill family; isn't that correct?

"A. Generally speaking.

"Q. And the reference to 'next year Americans all over the country will see it in his movie' is again a reference to the incident involving the Hill family?

"A. It is a reference to the incident."

Do you recall that I asked you those questions and you gave those answers?

A. No, I don't recall that you did, but I am sure you did.

Q. Didn't you read this testimony before you came here to testify, Mr. Prideaux?

A. Several weeks ago, yes.

[fol. 259] Mr. Medina: There is nothing inconsistent with that testimony, what he is saying here. Are you purporting to say there is?

Mr. Garment: Of course, that is for the jury to determine.

Q. Apart from the word "inspired" in the headline and in that second sentence, Mr. Prideaux, would you tell this jury any other words or phrase or picture or anything in that article or in the three pages of the article that would indicate that The Desperate Hours was anything but a dramatic portrayal of the Hill family and what took place in their house?

A. I would like to tell the jury that a word that's put in the headline is put there because it is a key position, and a word that's put in the first paragraph of a text is put there because it is a key position.

Q. All right.

Do you expect that the readers will read something more than just the headline?

A. Hopefully.

Q. Well, you expect them to look at the pictures, don't you?

A. Yes.

Q. And you expect their eye to first catch the words "actual event," don't you?

A. I think it will catch "inspires," don't you?

Q. Again these are matters for the jury to determine.

The words "actual event" below the headline were placed in there, were they not, specifically to indicate or suggest to the readers that the incident in which the Hills were involved is what is involved in the play?

A. No, it was not.

Q. And you say you hope that the readers will read beyond the headline?

A. I said that.

Q. Well, on the assumption that they do, Mr. Prideaux, I repeat my question to you. Would you go through the [fol. 260] article—take your time—and point out to the Court and jury anything in that article that would indicate that there was any difference between The Desperate Hours and the incident in which the Hill family was involved?

A. I don't think that will be necessary, because I am sure that establishing the original premise is done only in the covering headline and in the first paragraph of the text.

Q. Look, Mr. Prideaux, I am giving you a free reign on this.

A. I don't need it.

Q. I am telling you to take your time and to point out one clash, to point out one clash in points of the time of the actual incident as opposed to the time sequence of the play, to point out anything about the size of the family that would indicate that there was a clash, to point out anything about the events that took place, anything in any picture, in any caption, in anything in the text.

A. That would be a waste of everybody's time for me to do that.

Q. You mean it would be a waste of anybody's time to publish an article designed to show that this was the story of a real family and put anything in that article that would suggest to the reader that this was a work of fiction?

A. It's not a work of fiction.

Q. You say that The Desperate Hours is not a work of fiction? You tell this jury that this was not a work of fiction?

A. It's a combination that's inspired by a true event. It has its basis in a true event. It's not a whole cloth piece of fiction.

Q. Well, let's not worry for the moment about whole cloth pieces of fiction. Answer my question and tell me whether there is a single clash, anything in that article that would indicate to the reader that there was any difference at all between The Desperate Hours and the so-[fol. 261] called desperate ordeal of the James Hill family.

A. Yes. I think the word "inspires" takes care of that.

Q. Beyond the word "inspires."

A. It was not necessary beyond the word "inspires."

Q. It was not necessary.

A. No.

Q. Wasn't there a point at which you had the number of hours that the family was held hostage, in one of the drafts of your article, namely, nineteen hours?

A. I don't remember that.

Mr. Medina: Which page are you referring to and of what exhibit?

Mr. Garment: Exhibit 24, the second page.

A. Yes. That was put in—

. . . . . .

Q. By that I mean the Hill family.

A. Yes.

Q. The actual time sequence in The Desperate Hours is roughly 48 hours.

A. Right.

Q. Nineteen hours does not appear in the final article, does it?

A. No.

Q. Is there any reference in that article to the size of the real-life family?

A. No.

Q. But there is a reference and the pictures show the size of the fictional family, four in number, mother, daughter, father and son?

A. That's correct.

Mr. Medina: It seems to me we can keep on indefinitely in this vein.

The Court: The exhibit speaks for itself as to what is in there. I have permitted you to ask this witness what was his intention or what he meant by certain language, [fol. 262] but it seems to the Court that you have covered that point.

Q. Mr. Prideaux, when this case started, there was some reference to the fact of your being on trial here, and I want to make clear to this jury that the defendant is Time, Inc.

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Q. Would you read this document (handing paper to witness)?

A. Out loud?

Q. No, to yourself.

(The witness examined the paper referred to.)

Q. Without getting into the substance of it, Mr. Prideaux, that is a statement by the editor in chief of Life Magazine, Mr. Edward K. Thompson, as to the editorial techniques involved in the preparation of a Life article; is it not?

A. That's correct.

• • • • • • •

Q. Is that correct?

A. In general, yes.

Q. And it is a fair statement of the policy which you and your associates have followed in preparing articles that appeared in Life Magazine, isn't that true?

A. I think it covers many aspects of our preparing articles. I think that the philosophy—if that's the word for it—suggested there covers a great deal of our activities.

Q. And this is something that relates to the collective efforts of all the personnel involved in preparing a Life article, yourself, as writer-editor, the copy editor, the editor in chief and the other persons involved? Wouldn't that be [fol. 263] a fair statement?

A. I would amend that to say something that we strive for when possible.

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(Photostatic copy of "How Life Gets The Story" received in evidence as Plaintiffs' Exhibit 31.)

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Q. Now, Mr. Prideaux, while all of these changes were going on in the Life article, in the drafts of the Life article about The Desperate Hours, was there, to your recollection, any discussion about the Hill family?

A. I don't recall.

Q. Do you recall whether anybody raised any question about who they were or where they were or what they were?

A. The only honest thing I can say is I don't remember.

Q. Mr. Prideaux, do you feel that you alone are responsible for the preparation of this article?

A. Yes, I do.

Mr. Garment: That's all I have.

Cross examination.

By Mr. Malino:

Q. As I recall it, Mr. Garment asked you about a number of different departments in Life of which the theater department was one. Do you recall that?

A. Yes.

Q. The other departments he mentioned were other editorial departments; is that right?

A. Well, would you be so kind as to refresh my memory as to what I said, or do you want me to remember it?

Q. If you remember it.

A. It seems to me I mentioned departments like science, nature and so on.

[fol. 264] Q. That's right.

A. But the theater is sort of a sub-department of the entertainment department.

Q. He didn't mention the advertising department.

A. I know so little of it I shouldn't mention it.

Q. I say he didn't mention it.

A. No.

Q. In your examination that Mr. Garment conducted a few years ago were the following questions asked of you and did you make the following answers:

"Q. Is the advertising for Life Magazine handled completely separate from the subject material?

"A. Yes.

"Q. But is it handled on the premises of Time-Life Publications?

"A. I know so little about it that I can't give you an accurate answer. My impression is that it is handled on the premises.

"Q. Is there any policy with respect to clearance of material in terms or problems with advertisers or potential advertisers?

"A. Not to my knowledge.

"Q. At any stage of the preparation of the magazine are proofs made available to the advertising department?

"A. Not to my knowledge. I would say emphatically no.

"Q. Except presumably if any request was made?

"A. I doubt it. I am speaking out of my depth, but I do know that the editorial content of the magazine is entirely separate, and it is a matter of editorial policy to keep it that way."

Were you asked those questions and did you make those answers?

A. Yes.

[fol. 265] Q. If you were asked those questions today, would you make the same answers?

A. Yes, indeed.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. What is the basis, Mr. Prideaux, on which you wrote this story?

A. It seemed from the very beginning that this was an important news event in the entertainment field for reasons that I think we have talked about before, that it was a play based on a novel that was very well received. There was something quite unusual about it in that the movie had already been made and kept aside as the play was being developed. The production itself was of interest, as we stated, and when we were told about the connection with the Hill incident, that seemed to augment the interest of this whole production.

Q. What was the basis on which you included a reference to the Hill incident?

A. Being told by a source, to begin with, which I trusted, namely, a friend and neighbor of Mr. Hayes', and by the fact that Mr. Hayes, who it seemed to me realized that we were closely connected with or were interested in this incident, was cooperating and the fact that we were—our hope was to make this connection as part of the entire combination of events that made this an interesting news item.

Q. Do you recall that telephone conversation you made to Mr. Hayes after you talked to the press agents?

A. I don't recall word for word. I remember that I introduced myself by saying that I was a friend of Bradley Smith, who was his neighbor and friend. I remember telling him—although again I can't do any word for word re-

counting of what I said—that we understood that there was [fol. 266] a connection and it seemed like—from my point of view—an obligatory thing to do, to point out this connection.

Q. Had you ever met Mr. Hayes or Mr. Erskine before this article?

A. Never.

Q. And after this article when did you next see them?

A. Well, I met Mr. Hayes—under surprising circumstances—this past winter in Sarasota.

Q. Incidentally, what was Virginia Shevlin's connection with this article?

A. She was a substitute for Miss Ecker. Miss Ecker was away on a short vacation and Miss Shevlin came in to give us her help. At the actual shooting of the story she was given a shooting script and instructions of what to do, and as soon as she did that she withdrew from the story, as we expected her to do.

Q. So her only connection was to accompany the photographer on the shooting of the pictures?

A. Yes, to expedite the shooting of pictures.

Q. And Miss Ecker had been with you before Miss Shevlin came into the picture?

A. Yes.

Q. And then came in later to do the actual checking?

A. That's right.

Q. Did it ever occur to you at any time that you were invading anybody's privacy in connection with this article?

A. The question of privacy never crossed my mind, because I felt it was a matter of public record—a very public record, inasmuch as it had been so well publicized across the country, and the newspapers that I had seen, that were sent to us from Philadelphia, were screaming headlines.

Q. And you certainly were operating under good faith at that time?

Mr. Garment: I object to that question.

The Court: Objection sustained.

[fol. 267] Q. How many articles have you done since February 1955?

A. Well, I would say I have done about, roughly, 40 a year or more, between 40 and 50—times seven, that's 350 articles.

Q. Can you remember precisely what you did with respect to each of those articles?

A. No.

Q. Can you remember precisely what you read in connection with each of those articles?

A. No.

Q. Can you remember precisely what you read in connection with this article, back in February 1955?

A. No, I can't. I wish I could.

Q. Do you know what your morgue does with clips of out of town newspapers when they are sent to the morgue?

A. I think it throws them away. I think we keep New York papers and throw away the out of town papers.

Q. And that's the general policy?

A. Yes.

Q. Unless someone specifically directs them to be kept?

A. Yes.

Q. You were asked about the motion picture, I believe, "Blind Alley." Will you tell us about that.

A. Yes. I have a recollection that that particular picture centered around an escaped convict who found himself in a family where there was either a school teacher or a psychiatrist or a psychologist, some man very versed in this field, who broke down the man's confidence by pointing out that instead of being a strong, effective individual, he was, in fact, a very weak individual, and it was the gradual disintegration of this bully as he realized that he was not in fact a bully but was a weakling.

Q. Do you have Exhibit 22 in front of you, which is the so-called checking copy?

A. Yes.

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[fol. 268] Q. That page was included together with eight other pages as a so-called checking copy to the magazine. Isn't it a fact that these nine pages are a composite of some partial checking on the first draft of the story and complete checking on the final story?

A. That's correct.

Q. So that when there are no check marks on a portion of that paragraph, on the first page of Exhibit 22, that simply means that Miss Ecker had started to check that and then when she received the later draft of the story dropped that and checked the final draft?

A. That's correct.

Q. And what does that question mark mean?

A. I don't know. It can mean several things there, because this is something—she was making a notation to herself, either to make a phone call or to check up in a reference book or to find out from somebody about something in that area of the text.

Q. Isn't it common for the researcher who is doing the checking, if she wants to look into something further, to put a question mark to remind herself that she has got to look for something further?

A. That's the purpose of the question mark.

Q. Incidentally, in one of the copies of the exhibits, there was the word "KOMING" which you had written. Tell us about that and what you use that for.

A. It means information coming later. I use it very often —and we all do, when we are not sure of a spelling of a place name, a figure or even something that has been forgotten or something that we know is very easy to get. It's the kind of a thing that is usually put in as a substitute for some information that we know will be available when the checking time comes.

Q. Included in the sheets of Exhibit 22, these checking sheets of Miss Ecker, are sheets with the entire article as [fol. 269] it finally came out and Miss Ecker's check marks over each word. Correct?

A. That's correct.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Prideaux, Mr. Medina just asked you about that question mark. Correct me if I am wrong, but you said it's customary or quite usual for a researcher to make a question mark as to some specific item as a reminder to herself to check it in the future. Is that right?

A. I believe that's what I said. That's what I mean.

Q. There is no specific item to check there. There is no specific item questioned. It's the entire paragraph that was questioned.

A. I am sure that's not what was in her mind.

Q. You know what was in her mind?

A. To a point, to a degree.

* * * * * * *

Q. There are areas of this first paragraph that are unchecked. Plainly enough, that's something that Miss Ecker realized she had to check.

A. Correct.

Q. There is a specific question mark over the word "somewhat" as a reminder to her—

A. In the next paragraph.

Q. About the word "somewhat"?

A. Right.

Q. There to raise that or to think about it or to say something to somebody about it?

A. Right.

Q. And you are telling this jury that the question mark next to the first paragraph was with reference to some specific item in that paragraph?

A. Perhaps two specific items. It was a reminder to herself, a notation to herself.

Q. Did she ever tell you that?

A. I don't recall.

[fol. 270] Q. Well then, how can you state positively that that's what it was?

A. I am not stating positively what it was. I say I am thinking that's what it was.

Q. Could it have been a question as to the truth of that whole paragraph?

A. I doubt it very strongly.

Q. You doubt it, but you recognize that possibility, don't you?

A. Remotely.

Q. You tell this Court and jury that every single word bearing a check mark in that first paragraph and the sense of that first paragraph is true and honest?

A. Certainly the final thing that was in print was true and honest.

Q. I am talking about this paragraph here. The final thing went far beyond this paragraph, didn't it, Mr. Prideaux?

A. I don't believe so.

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A. Will you repeat the question again, please?

Q. I asked you whether she might have had a doubt about the truth of that whole paragraph.

A. I don't think so. But again I am second guessing it.

Q. And you are telling this Court and this jury that there is no doubt about the truth of that paragraph and the honesty of the statements made there?

A. I am not saying it. I think in the mind of the checker —and I have to put it this way, because I am trying to enter into her thinking on this—that there were all kinds of statements here that she wanted to double check.

Q. You wrote that paragraph, didn't you?

A. Certainly.

Q. I am asking you whether it was truthful when you wrote it.

A. To my knowledge, it was completely truthful.

Q. Now Mr. Prideaux, you were talking about that reference to Koming and Mr. Medina drew out from you the [fol. 271] fact, as you testified to this jury yesterday, that

that is a reference to some item that is not at hand, still to be found or checked.

A. Usually readily available but not at hand.

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Q. You say the information is readily available to you, Mr. Prideaux. Then what necessity was there for you to use a code word?

A. Because the information, no doubt,—I don't remember specifically, but it often occurs this way: It is on Miss Ecker's desk in the next room, and I am busy on the telephone, and I am not going to stop and ask her to bring me in a clipping on it.

Q. You told this jury yesterday and you told this jury just before in the cross-examination by Mr. Medina that there were screaming headlines that were at hand about the Hill incident.

A. That's right.

Q. And, isn't it a fact, that every one of those news accounts referred to the Lewisburg Penitentiary?

A. I don't know whether it is a fact that they all did. I assume so.

Q. You know that the New York Times referred to it.

A. I don't remember, but I would assume so.

Q. Didn't you look at that before you came here to testify, Mr. Prideaux?

A. The New York Times?

Q. Yes.

A. No.

Q. The article referring to this incident.

A. No.

Q. You didn't look at that?

A. Not two or three days ago, no.

Q. Now, let's talk about these screaming headlines. That's one of the screaming headlines that you received, the one that appears up at the top left (indicating)?

A. That's correct.

[fol. 272] Q. Whom did you get that from?

A. From one of our stringers in Philadelphia. That means someone who is usually employed full time some place else but who can be on call if we need anything done.

Q. And his name was Adrian Lees?

A. Right.

Q. And he just sent you a headline?

A. No, I don't believe so.

Q. With reference to this. Wasn't it your testimony that you asked Mr. Lees to furnish you with a headline and he furnished you with that headline?

A. I don't recall the precise wording of the testimony.

Q. What do you recall the facts to be?

A. To the best of my recollection, we asked for several headlines.

Mr. Garment: At page 76.

Q. Do you recall my asking you this question and your giving this answer under oath back in 1957 about this time subject matter:

"Q. In any event, Mr. Capa was not a staff photographer for Life Magazine but was assigned to this job?

"A. That is my impression. The only research that we did was to ask our Philadelphia stringer, whose name I gave you, Adrian Lees, to find us a headline there—I think he works on the Philadelphia Bulletin—from the morgue of that newspaper that we could use to establish that this had been a very well known incident. Once we had established that, once we had shown the picture of the house, that it still existed, we felt as far as the incident was concerned that we had done all we had to do."

[fol. 273] Do you recall being asked that question and giving that answer?

A. Yes. We were looking for a single headline. But, again,—

Q. Mr. Prideaux—

Mr. Medina: Let the witness finish his answer, please, Mr. Garment.

The Court: Yes, let him finish his answer.

Mr. Medina: It's most unfair of you.

A. We were looking for a single headline, but, as I truly recall, we asked him to send several, depending on the form of the layout. If it were going to be—that's almost a square box that worked out there; we would use that kind of a headline. If it were a different sort of layout we might need a different headline. It was a mechanical problem. In my deposition I said we wanted a headline, which is true. But the wording and the shape of the headline was relevant to the layout itself, and we were trying to foresee that.

Q. Well, headline or headlines, all you asked him to furnish you with were headlines.

A. That is right, at that time.

Q. And ultimately you selected this one from the Philadelphia News?

A. The News, yes.

Mr. Garment: I ask Mr. Medina to produce the original, complete headline.

Mr. Medina: We haven't got the headline. That's lost, too. We just have a photostat of it in our files.

Mr. Garment: That's lost, too?

Mr. Medina: Here it is and I produce it.

Mr. Garment: I offer this photostat of this partial headline in evidence, your Honor.

[fol. 274] Mr. Medina: No objection.

(Photostatic copy of headline from the Philadelphia Daily News was received in evidence as Plaintiffs' Exhibit 32.)

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By Mr. Garment:

Q. Is that a photostatic copy of that headline?

A. I would say yes.

Q. What did you receive from Mr. Lees, the actual headline?

A. I don't recall.

Q. You don't recall.

A. Whether he had the photostat made in Philadelphia and sent it on or whether he sent on the actual newspaper. My impression again is from recollection that he had several photostat headlines, sent them to us, because that was the form that we could use them most easily in. I think he did that as a favor to us.

Q. Mr. Prideaux, look at this. This is a photostat or a photograph of a headline that was taken some place. You can see the binder on the left, can't you?

A. I don't know what you mean by that.

Q. I don't know where it was, but it is obviously a photograph taken not of a headline but of a headline in a book of headlines or newspapers.

A. That doesn't seem obvious to me.

Q. It doesn't?

A. No.

Mr. Garment: Your Honor, I have a blowup of this headline, and with your Honor's permission—

The Court: You can show this to the jury.

[fol. 275] (Plaintiffs' Exhibit 32 was then circulated among the jury.)

The Court: Mr. Medina, do you expect to recall this witness in the defendants' case?

Mr. Medina: No. At the same time, I just want to state for the record, and for Mr. Garment, that I have available Mr. Edward Thompson and I also have Mr. Kastner available. I have Miss Shevlin available and I have also Miss Ecker available.

Mr. Garment: Well, you can call some witnesses on your own case, Mr. Medina.

Mr. Medina: Just a moment—

Mr. Garment: Don't make that kind of a speech to the jury.

Mr. Medina: Let me finish this up. If you want them at any time, they are available. I intend to call Miss Ecker and not the remaining people to this courtroom.

The Court: All right. The lawyers can try this case any way they think is best, most advantageous for their own clients.

By Mr. Garment:

Q. I ask you this. Do you recall what appeared in the portion that was cropped off that headline?

A. No, I don't.

Q. Was it something that clashed with the idea that this was the story of the James Hill family?

A. I have no idea.

[fol. 276] Q. When was this thing cropped?

A. That I do not know.

Q. Take a look at the back of it.

* * * * * * * *

Q. When was that cut, before or after this article was published?

A. I don't find any evidence here one way or the other, but I would assume that it was used in Life February 28th. It was returned to the Time, Incorporated file on April 8th of the same year, and there is a date on here "New York Supreme Court Exhibit No."

Q. The reference "Used in Life February 28, 1955" was originally a red stamp, and that part was cut off, wasn't it?

A. I don't understand what you mean. There is the stamp on the back.

Q. Let me just ask you a couple of questions and I will pass it around to the jury. And then at a subsequent time after that stamp had originally been placed on, somebody wrote in again in black crayon "February 28, 1955, page 75," referring to the page of the issue in which this had appeared?

A. That I do not know.

(Plaintiffs' Exhibit 32 was again circulated among the jury.)

Q. Now Mr. Prideaux, you testified about your familiarity with the play and with the real-life incident. I ask you whether it was your understanding when this article was prepared that the scene depicted in the top photograph actually took place in the real-life incident?

A. No.

Q. Was it your understanding when you prepared this article that the scene depicted in the middle photograph took place in the real-life incident?

A. No.

[fol. 277] Q. Was it your understanding when you prepared this article that the scene depicted in the final photograph took place in the real-life incident?

A. No.

Q. Was it your understanding that the scene depicted in this photograph took place in the real-life incident?

A. Specifically, no.

Q. Was it your understanding that the scene depicted in the bottom left photograph took place in the real-life Hill incident?

A. Specifically, no.

Q. Was it your understanding that the scene depicted in the bottom right-hand photograph took place in the real-life incident?

A. The same answer.

Q. Well, you told Mr. Medina that when The Desperate Hours came out, you felt it was obligatory to connect this family with The Desperate Hours. Is that right?

A. Yes.

Q. Did you feel it was obligatory to involve them in this kind of violence and in this kind of a display?

A. No. I think we were—

Q. Did you give any thought to it?

A. A great deal.

Mr. Medina: Won't you let the witness finish his answer.

Q. Go ahead; finish your answer.

A. A great deal of thought.

Q. You gave a great deal of thought to what?

A. Whether it was obligatory to—no, I am confused, I am sorry—gave a great deal of thought to what we were saying, what impression we were creating, and we took special pains to identify the scenes that were from the play itself as being from the play itself.

Q. You didn't give one single thought to the Hill family while this whole article was being prepared, did you?

A. That is not true.

Mr. Garment: That is all.

[fol. 278] Recross examination.

By Mr. Malino:

Q. When Mr. Garment examined you before trial did he ask you these questions and did you make these answers:

"Q. Do you recall whether you made any inquiry or were told whether, in response to an inquiry or not, by Mr. Hayes or by Mr. Erskine or by anybody else connected with The Desperate Hours production the extent to which the play followed the real-life occurrence?

"A. No, I don't recall.

"Q. That is you don't recall asking or being told or getting any information in that connection?

"A. No. I assume the play took certain dramatic liberties with the story and I—and I rested on that assumption."

Those questions were asked of you and those were your answers?

A. That's correct.

Q. While the drafts were being prepared and the corrections made, did you have any conversations with Mr. Hayes or Mr. Erskine?

A. No, I didn't.

Mr. Malino: That's all.

Recross examination.

By Mr. Medina:

Mr. Medina: I have taken this Exhibit 22, which is the checking copy, and divided it into two groups of papers, one, the last six pages, which I ask to have marked separately, I would suggest, as 22-A, and the remaining three pages, the first top three pages, we can leave as Exhibit 22.

(The six pages referred to were marked as Plaintiffs' Exhibit 22-A.)

[fol. 279] Q. I hand you Exhibit 22-A and ask you whether it is a fact that this is the checking copy of the article as it finally appeared.

A. That's correct.

Q. And these first three pages which are left are the preliminary checking which was done on the first draft. Is that not correct?

A. Yes. It was the checking that was interrupted, so to speak, when the second copy came along, and it was all transferred to the second copy.

Mr. Medina: That's all.

(The witness was excused.)

* * * * * * *

April 12, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * * * *

(The jury was recalled to the courtroom.)

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(The photograph previously marked as Defendant Time's Exhibit A for identification was received in evidence as Defendant Time's Exhibit A.)

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(The photostat of the New York Herald Tribune previously marked Defendant Time's Exhibit C for identification was now received in evidence as Defendant Time's Exhibit C.)

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(The photostats of a group of six newspapers previously [fol. 280] marked as Defendant Time's Exhibit D for identification, were now received in evidence as Defendant Time's Exhibit D.)

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(The photostat of the Conshohocken Recorder, previously marked as Defendant Time's Exhibit E for identification, was now received in evidence as Defendant Time's Exhibit E.)

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(Photostat of Conshohocken Recorder, previously marked as Defendant Time's Exhibit F for identification, was now received in evidence as Defendant Time's Exhibit F.)

Mr. Medina: This is the Conshohocken Recorder for November 25, 1952 with an item headed:

"Hill Unhurt. Car Wrecked in Crash," and has a little article describing an automobile accident that Mr. Hill had been involved in.

Mr. Garment: Your Honor, I don't understand what that has to do with anything in this case.

Mr. Medina: Newsworthiness.

Mr. Garment: Newsworthiness?

The Court: All right, gentlemen.

Mr. Medina: We asked to be deemed marked for identification the original complaint, verified by Mr. Hill on October 13, 1955, the first amended complaint, verified by Mrs. Hill on March 7, 1956, and the second amended complaint, sworn to by Mrs. Hill on July 3, 1956. I have copies of those three complaints which I should like to offer in evidence at this time.

[fol. 281] Mr. Garment: I have no objection.

The Court: Are there three or two?

Mr. Medina: Original complaint, amended complaint and second amended complaint; three in all, your Honor.

The Court: Without objection, they will be received as Defendant Time's Exhibit H.

(The original complaint, amended complaint and second amended complaint, previously deemed marked as Defendant Time's Exhibit H for identification, were now received in evidence as Defendant Time's Exhibit H.)

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Laura Ludwig, 133 East 95th Street, New York, N. Y., called as a witness on behalf of the Defendant Time, Inc., being first duly sworn, testified as follows:

Direct examination.

By Mr. Medina:

Q. Mrs. Ludwig, your maiden name was Laura Ecker?

A. Yes.

Q. And you were formerly employed by Time, Inc.?

A. Yes.

Q. And you have since left us to be married, have you not?

A. Yes.

Q. And now you are a housewife busily raising a family?

A. Yes.

Q. In 1955 you were employed by Time, Inc., were you not?

A. Yes.

Q. And did you have anything to do with an article which appeared in the February 28, 1955 issue of Life entitled "True Crime Inspires Tense Play"?

A. Yes, I did.

[fol. 282] Q. Can you tell us what you did in connection with that article?

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A. I was a theater reporter for Life Magazine, and in that connection I worked on that story, went down to Philadelphia to see the play—

The Court: You will have to keep your voice up so all of the jurors and the lawyers can hear you.

A. (Continuing) —and I checked the story when it appeared in the magazine.

Q. When did you first hear about the story or the possibility of doing the story, roughly?

A. Roughly sometime in January 1955.

Q. And do you recall what the circumstances were?

The Court: I am sorry, but Juror No. 12 apparently can't hear you.

The Witness: I beg your pardon. Sometime in January of 1955.

Mr. Garment: I can't hear the questions or the answers.

Q. Do you recall what the circumstances were?

A. I don't recall them.

Q. Did you have a talk with Mr. Prideaux?

A. Yes. As we always did when we were planning theater stories, we discussed—

Mr. Garment: I object to any speeches.

The Court: He wants you to be specific with regard to this case.

The Witness: I was trying to be specific.

[fol. 283] A. (Continuing) We would discuss stories that we were planning to do. We had a discussion—

The Court: Did you do that in this case?

The Witness: In this case we discussed a play that was being produced that we might possibly cover in the magazine.

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The Court: Now tell us what happened. In January what did Mr. Prideaux say to you and what arrangements did

you make with regard to covering this particular story which appeared in the February 28th edition of Life.

The Witness: I cannot tell you in Mr. Prideaux's words what he said to me.

The Court: Tell us the substance.

The Witness: In substance, I can say that we discussed the possibility of doing a story on a play that was being produced. Then that we would be going to Philadelphia to cover it.

By Mr. Medina:

Q. Did you have any discussion about any relation between the play and any real life incident?

A. Yes. As I recall, he told me that we were going down to Philadelphia not only to see the play, but there was a house that existed—

Mr. Garment: I am sorry. I don't hear the witness.

The Court: I will have it read so that everybody can hear it, after she finishes.

[fol. 284] The Witness: Would you begin again, Mr. Medina?

Q. Do you recall any discussions with Mr. Prideaux about any relationship between the play and a real life incident, in substance?

A. In substance I recall that I was told that the play had been inspired by a real life incident and there was the possibility of taking some pictures at a house not far from Philadelphia in connection with our coverage of the play.

Q. I show you Exhibit 22 and 22-A and ask you if you can tell me what those are.

A. Those are my checking copies of the story. This was the first one that I received, and this would probably be the final copy, I don't know.

Q. You refer to 22 as being the first one you received?

A. If this is 22, this would be the first.

Q. And 22-A, over here, as being the second one you received?

A. Yes.

Q. The final copy?

A. Yes.

Q. Can you tell us what a checking copy is?

A. Yes. When the story is first written, I receive a copy of the writer's work. I am given it to read for accuracy and, of course, it goes through various revisions because there are other editors, and as each revision is made I am given that to check. So that this would be the first one I receive and this (indicating) would be the final form that I am given to check.

Q. And when you get to the final form and you put those check marks over each word, what does that signify?

A. That I have seen this copy and that to the best of my ability and knowledge what is in here is accurate.

Q. What do you use to check the accuracy?

A. Well, I use various sources, depending on the story. I [fol. 285] used newspaper clippings or interviews that I had had, material gotten up from the morgue, books—you know, that kind of thing.

The Court: Now you are talking about generally?

The Witness: Generally.

The Court: In this specific case can you tell us?

Is that what your next question would be?

Mr. Medina: Yes.

Q. Can you remember what you had before you in this specific case?

A. Newspaper clippings and play reviews, probably the theater program, probably a dictionary, things like that.

Q. That's to the best of your present recollection on that.

A. Yes.

Q. If you look at Exhibit 22, which is these sheets over here, you see a question mark over on the left there, and there are certain lines that haven't got any check marks on them. Can you tell us what happened in connection with that?

A. Yes. My method was when I was given a first copy to read, I would read it all through and see if there was anything in it that I wasn't exactly sure of, that I just didn't have at my fingertips and I would have to go further into checking just to see if there were going to be any problems that would be complicated. I made little notes for myself, like a question mark, if there were some lines here that I would need to go back to.

This is opposite some sentences about the filming of the play. I was not certain about the information as to the filming and as to whether anybody else worked on the screen play, and I would say, maybe, about this sentence as to when the film was to be released. So that this in the first draft was a note to myself to call about it or look that up.

[fol. 286] Q. And, generally, when you put the question marks on the checking copy, would it indicate something along those lines?

A. Yes, that I wanted to make sure for myself before I checked.

Q. Will you look at Exhibit 22-A. I call your attention to the first paragraph and the handwriting which appears in that first paragraph, particularly where you have the phrase "Until they could obtain money" stricken out and put in "While they hid from manhunt."

Whose handwriting is that?

A. Mine.

Q. And is there any other handwriting in that paragraph that is yours?

A. No. And you see there is even an "X" in the margin which means that there was something that I wanted to bring up to change.

The Court: Something you wanted to what?

The Witness: To change, like another mark of mine, that I wanted to come back to and have it changed.

Q. So when you were checking the copy, you found an error and took it up with Mr. Prideaux; is that correct?

A. Yes.

Q. And then after you talked with him you wrote in in your handwriting that change so as to make the statement accurate?

A. Yes.

Q. Do you see the word "about" which is added before the words "ten miles"?

A. Yes.

Q. Whose handwriting is that?

A. Mine.

Q. How did you come to add that?

A. Because I was checking how far the house was from Philadelphia, and ten miles didn't seem to be quite right [fol. 287] to me. It was—I don't remember whether it was more or less, but it was not precisely ten miles. So "about" made me feel that was more accurate.

Q. So that you changed "an isolated house ten miles outside Philadelphia" to "an isolated house about ten miles from Philadelphia" because you thought that that was more accurate.

A. Yes.

Q. And you couldn't check out the first statement.

A. No.

Q. Are there any other changes which you made, do you recall, in that checking copy?

A. I notice some spelling changes that I made. I don't see any that I know I specifically made. There are some in my handwriting, but I could have gotten them, you know —there are changes that come onto this copy because an editor has made a change.

Q. And then when the change was made you checked that?

A. That's right.

Q. And when you got all through with Exhibit 22-A you had checked every word in the article—

Mr. Garment: I object to that as leading.

The Court: I don't think there is any question about it. Mr. Prideaux has testified—each time you marked a word there that meant you checked it; is that right?

The Witness: That is right.

The Court: And did you check every word there?

The Witness: Yes.

Q. And you were satisfied at the time that you finished your checking that that article was correct and accurate, were you not?

A. I was.

Q. Now, you note on the first page the words "True Crime Inspires Tense Play"?

A. Yes.

[fol. 288] Q. Did you check that caption?

A. Yes.

Q. And were you satisfied that that was a correct caption?

A. Yes.

Q. And you noticed in the text on the next page of 22-A the phrase "inspired by the family's experience." Did you check that out?

A. Yes.

Q. And you were satisfied of the correctness of that?

A. Yes.

Q. Can you tell us the basis on which you checked those two statements, if you can recall?

A. Well, that I had been told by Mr. Prideaux—

Mr. Garment: I move to strike that out. We had a day and a half of Mr. Prideaux. I don't think we should have it through hearsay testimony.

The Court: I am going to overrule the objection. This is already before this jury.

Mr. Prideaux has testified here at great length. I am going to permit it. Overruled.

A. Now where am I?

Q. What was the basis on which you checked—

A. I have to mention Mr. Prideaux. This is the man I worked with. This is conversation that I had with him about my work on the story. If I can't—

The Court: You are talking about this first conference you had with him in January before you went down to check on the play and this whole situation?

The Witness: I am talking about that and this: When I get my copy I read it and I go to him and say "You said to me Mr. Hayes told you about this."

And he would say yes, this is his understanding. And that was mine.

[fol. 289] The Court: You asked him specifically about those two phrases—what was it?

Mr. Medina: "True Crime Inspires Tense Play."

The Witness: I would have to say, seven years later, I don't recall specifically what questions I asked.

By Mr. Medina:

Q. But the substance you recall?

A. The substance is that I would have asked him about that and his saying yes, that's what he had been told would be my justification for saying that was accurate.

The Court: In other words, that's what you would call checking that particular phrase?

The Witness: Yes.

Q. Had you also been down to Philadelphia with Mr. Hayes and Mr. Prideaux?

A. Yes.

Q. And you had gone out to the house?

A. Yes.

Q. And had Mr. Hayes said anything to you about the house?

A. Not that I recall specifically now.

Q. Did Mr. Hayes ever tell you there wasn't a connection between the incident and the story?

A. No.

Q. Can you give us a little bit of your background, your employment by Time, how long you were employed, what education you had and so on. Just briefly so we know it.

A. Well, Vassar College graduate. Before working for Time I had worked for some movie companies as a production assistant.

Q. And then you came to work for Time?

A. Yes.

The Court: How long did you work for Time?

[fol. 290] The Witness: For over ten years.

Mr. Medina: That's all.

Cross examination.

By Mr. Garment:

Q. Mrs. Ludwig, isn't it a fact, that the job of researcher or reporter at Time, Incorporated was not always an easy one? Is that correct?

A. I think it's reasonably fair to say that about anything.

Q. Isn't it a fact that generally when you would start to do your work of checking an article—and by you, I mean researchers—

A. Now would you speak up, please.

Q. I'm sorry. Isn't it a fact that when you would start to do your work in connection with the copy on an article, that the article would already have been approved for purposes of publication, although the subject matter, the contents, had not already been revised and finally approved?

A. That is not necessarily true.

The Court: Wait a minute, Counsel, let me understand that.

In other words, you might check stories which never were printed. Is that what you mean to say now?

The Witness: That's true.

Mr. Garment: I see.

Q. I think I was a little vague. In connection with this particular article, Mrs. Ludwig, isn't it a fact that you first started to work on it after you came back from vacation?

A. You will have to tell me what you mean by the article.

Q. I mean the actual text of the article, taking the text of the article.

A. Yes.

[fol. 291] Q. That was after the layout conference had taken place; and the article had been approved for inclusion in the magazine. Do you recall that generally?

A. Can you break that down a bit?

Q. I will try my best. I understand, it's a long time—

A. It's a long time. I don't recall whether I was in at the layout session or not. I was probably back a few days before the story started being worked on. I don't recall whether I was. I might have been in it and I might not. I don't recall now.

Q. At any rate, Mrs. Ludwig, the editor, Mr. Prideaux, would and did start to write his actual copy after the layout conference, isn't that correct?

A. I would think so.

Q. And you would then start to check mark his actual copy; is that right?

A. I would have to be given copy before I could check it.

Q. Yes. And assuming that Mr. Prideaux started to write his copy after the layout conference, then that would be after the story idea had been improved for inclusion in the magazine, isn't that correct?

A. Yes.

Q. Then your task, like the task of the other reporters or researchers at Time, Incorporated, would be to check, place check marks on each and every word in the article to the end of verifying the accuracy of those specific words. Is that right?

A. Yes.

Q. Certainly you had no policy-making functions in connection with Life Magazine?

A. No.

Q. Certainly Mr. Prideaux and the other editors, Mr. Thompson and Mr. Kastner, were the policy-making personnel on the magazine. Is that right?

A. Yes.

Q. It would not be your responsibility or, for that matter, your function to argue against a decision made by the [fol. 292] editorial, your editorial superiors. Wouldn't that be a fair statement?

A. Well, it depends on what decision. If it was a matter of accuracy it would be my responsibility to say what I thought was right.

The Court: Well, Counsel, perhaps, if you will permit me—

Mr. Garment: Please.

The Court: I think what the lawyer is referring to is if the editors arrived at a conclusion that they wanted a certain story or a certain type of story, you would not be in a position, if you were given the job of checking it, to say "This is not a good idea" or "Don't do this."

The Witness: No.

The Court: Is that your point?

Mr. Garment: You put it very clearly, Judge.

Q. So that when you received the copy of the first draft of this article from Mr. Prideaux, you then proceeded to check mark so much of it as you could on the basis of the knowledge that you then had; is that correct?

A. Yes.

Q. And you made check marks over every word, including articles and prepositions and the like, is that correct?

A. Yes.

Q. And that is something that you do not because Mrs. Ludwig wants to do it but because that has been the policy of the research department of Time, Incorporated for many years, isn't that correct?

A. Yes.

Q. And there is a differentiation between plain pencil check marks and red check marks; is there not?

A. Yes.

Q. The red check marks deal with matters of primary importance?

A. Yes, you could say that.

[fol. 293] Q. And that would be the name of the author of the play?

A. Yes.

Q. And the name of the play?

A. Yes. I would like to volunteer that not everybody follows that system.

Q. I understand. But you followed that system?

A. More or less—when I remembered. I used to try to do that, yes.

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Q. And you also checked physical facts, such as the location of the actual house?

A. If it was part of the copy, yes.

Q. Its actual distance in terms of miles in Philadelphia?

A. Yes.

Q. And you made a telephone call to determine that?

A. No, I don't recall that I made a telephone call.

Q. Do you recall how you determined that?

A. I think I probably looked it up in the Columbia Gazetteer.

Q. Mrs. Ludwig, it is true, is it not, that the Time-Life researchers have available to them research facilities that are unsurpassed in the world of journalism?

A. We have very fine facilities.

Q. There is no question about that, is there?

A. No.

Q. There is no stinting or limiting of what you do or whom you call or what steps you take in order to investigate an article and place check marks over each word?

A. We try to be as thorough as we can.

Q. And all that is to the end of avoiding any accidental or inadvertent mistake?

A. Yes.

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Q. Is it a fact, Mrs. Ludwig, that over the years researchers and editors at Life Magazine have had a kind

[fol. 294] of running tussle about story ideas versus accuracy?

A. No, not that I know of.

The Court: Let me hear the question.

The Witness: I wish you would explain it again before I really answer.

Mr. Garment: Let me restate it.

Q. Did you ever read a book by Noel Busch, The Life of Britton Hadden, the founder of Time Magazine?

A. No.

Q. Did you ever read a book called "Such Is Life" by a former Life researcher?

A. No.

Q. Did you ever hear of a man named Edward Kennedy, who was an editor of Life Magazine?

A. No.

Q. Do you recall a memorandum that was circulated by some editor of Life Magazine in relation to the researcher holding his or her own against the editor in relation to matters of truth and accuracy?

A. No.

Q. Mrs. Ludwig, there has been a considerable amount of talk in this case about similarities between The Desperate Hours and the events in which the plaintiffs James and Elizabeth Hill and their family were involved.

I don't want to mislead you at all, so I am telling you that there have been statements to that effect made by Time, Inc. counsel and questioning about similarities.

Did you make an analysis of The Desperate Hours to determine and to list similarities between it and the Hill incident?

A. I don't recall having made a specific list.

Q. Mrs. Ludwig, you read the drama reviews and clippings contained in the green envelope bearing your name, which is Plaintiffs' Exhibit 25, did you not?

A. I think so, yes.

[fol. 295] The Court: What's the answer?

The Witness: I think so.

Q. You, of course, read those before this article was published and in connection with the checking of the article?

A. I don't recall specifically reading them, but I may well have.

Q. Do you recall making those clippings, including the article by Joseph Hayes which appeared in the Sunday Times for January 31, 1955, available to Mr. Prideaux?

A. They would be among the material that was available to him, yes.

Q. Is there something further you want to say?

A. My problem here is what I did specifically and what I recall. After seven years I can only say what I believe I did —or would have done.

Q. Well, you were examined some years ago by me in connection with this case, were you not?

A. Yes.

Q. And your recollection was, of course, clearer at that time?

A. That's right.

Q. And at that time you recalled making them available?

A. If I said so, then that is what I must have done.

Q. Mrs. Ludwig, there was a question mark placed by you over the word "somewhat" in the first checking draft, that is, the word "somewhat" in the phrase or in the sentence "Directed by Robert Montgomery and expertly acted, Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis." The question mark was put by you over the fourth word, "somewhat"?

The Court: You are referring to Plaintiffs' Exhibit 22, the first copy she received.

Mr. Garment: Plaintiffs' Exhibit 22.

[fol. 296] Q. Do you see that question mark?

A. Yes.

Q. And was that also a reminder to yourself to check something or raise some question with Mr. Prideaux?

A. Yes.

Q. What was that question?

A. Whether it was fictionalized or somewhat fictionalized and to possibly go over with him some similarities in the accounts, the newspaper accounts of the incident on which the play was based and the play.

Cross examination.

By Mr. Malino:

Q. Mrs. Ludwig, Mr. Garment—I represent Mr. Hayes and The Desperate Hours Company. Mr. Garment referred to the examination he conducted of you in December 1957 at Mr. Garment's office, at which I was not present. I just want to ask you whether you remember the following question being asked and your having made this answer:

"Q. Apart from what Mr. Prideaux had told you in relation to Mr. Hayes' statement as to this connection, did you ever hear Mr. Hayes say anything about the connection between this real-life incident and his play?

"A. I cannot recall anything specific."

Did you make that answer to that question?

A. I made that statement.

Q. And you would answer it the same way today?

A. I would answer it the same way now.

Q. Then you were also asked by Mr. Garment—

Mr. Medina: What page?

[fol. 297] Mr. Malino: Page 18.

"Q. Do you recall whether anything was said about the real-life incident while you were touring around the house?

A. No, because we were looking for scenes or things that were mentioned in the play as happening in doorways or outside the house, and our conversation was directed to where we could take certain pictures."

Were you asked that question and did you give that answer?

A. Yes.

Q. You would testify the same way today if you were asked the same question?

A. I would.

Mr. Malino: That's all.

Redirect examination.

By Mr. Medina:

Q. Before you went on vacation back in 1955, you did do some work in connection with that article, didn't you?

A. Yes, I did.

Q. You went down to Philadelphia and saw this house?

A. Yes.

Q. And it wasn't until you got back from vacation that you started to work on the actual article?

A. That's right.

Q. And in between Virginia Shevlin was filling in for you on some purely routine picture assignments?

A. Yes.

Q. And your function as researcher and working on the checking copy was to insure that the article and each word in the article was accurate, was it not?

A. Yes, it was.

Q. And if you thought it was inaccurate in any way, would you argue about it?

A. Yes, I would.

[fol. 298] Q. Now, you say that you didn't make up any specific list of the similarities between the actual incident and the play. Were you aware in general of the similarities between the two?

A. Well, I had read the newspaper accounts. That's part of the research, and Mr. Garment asked whether I made a specific list. I don't recall making a specific list, but I observed that there were similarities.

Q. And you had seen—
A. I had seen the play and that satisfied me.
Q. And you put two and two together?
A. Yes.

Mr. Medina: That is all.

Recross examination.

By Mr. Garment:

Q. Mrs. Ludwig, just briefly, when you were putting two and two together—as Mr. Medina put it to you—did you have in mind that there had been violence in the Hill house?
A. I don't understand what you mean by did I have in mind.
Q. When you were thinking about similarities, reading newspaper accounts, and the relationship to The Desperate Hours—
A. I don't recall what I had in mind. Could you make your question clearer?
Q. Do you know whether there was any violence in the Hill incident?
A. Now I don't recall the details of the incident very clearly. At the time I must have satisfied myself as to whatever questions I had about it. That's the best I can say.
Q. Mrs. Ludwig, after you completed your work on the story, you had nothing further to do with the file, or documentary materials relating to the story; is that true?
A. After I finished my work?
[fol. 299] Q. Yes.
A. No.
Q. Whatever happened after that would have been the full responsibility of some other person or persons; is that a fair statement?
A. Yes.
Q. Do you have any idea what happened to the actual news clippings of the Hill incident?
A. No.

Q. Do you have any idea what happened to the layout?
A. The layout?
Q. The layout of The Desperate Hours story.
A. No.
Q. Do you have any idea what happened to the biographical file on Joseph Hayes?
A. I would think it was returned to the morgue.

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Q. Would you have any idea as to what happened to the complete original headline from the Philadelphia Daily News that had appeared in The Desperate Hours article?
A. No.
Q. Would you have any idea what happened to the shooting script?
A. No.
Q. Do you have any recollection of what that full headline said after the semicolon?
A. No.

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Mr. Medina: These are questions and answers, your Honor, of Mrs. Hill, taken on October 30, 1958.
I read first from page 128.

"The book, as I see by this copyright notice here, was published in March 1954 and went through three printings. Did the comparisons that were made to you by these friends of yours in New York, were they in reference to the novel [fol. 300] published in 1954?
"A. In reference to The Desperate Hours, either the novel or the play. Some of them read the book, some had seen the play, some had seen the movie; but they are all the same.
"Q. I am only talking about the period preceding the publication of the Life article.
"A. Preceding that period there was the play as well."
Page 129.
"Q. Did anybody call to your attention a publication in serialization form of the book in Collier's Magazine?

"A. I heard about that.

"Q. What did you hear about that? When?

"A. At the time it was published, I guess.

"Q. Was it your New York friends that you heard about this from?

"A. I don't remember which friends might have told me, but I wouldn't know if it was my New York friends or Connecticut friends; friends.

"Q. You can't be any more specific than it was just your friends?

"A. Just my friends.

"Q. Is it a fair statement to say it was all of your friends, as a general statement?

"A. Yes. I have more friends in Connecticut than I have in New York. So I would hear it more times there than I would in New York."

Page 130.

"Q. You testified earlier that when you moved to Connecticut, that on one occasion in 1954 you were having coffee with a circle of friends, the MacKenzies, as I recollect, when this subject came up of the comparison between [fol. 301] the novel and the incident at Whitemarsh. Is that correct?

"A. I believe so, yes.

"Q. Do you recollect how many people were there at the time? Was it a substantial group of friends?

"A No, a small group of close friends.

"Q. Did this have anything to do with this PEO that you mentioned?

"A. No, sir. It was never discussed in the PEO.

"Q. Do you remember who the persons were besides, I think, this Mrs. MacKenzie from Philadelphia?

"A. She is the one who sent me the book.

"Q. Then there was her sister?

"A. Her sister-in-law, Mrs. Dorothy MacKenzie.

"Q. Who else was there?

"A. Mrs. Kirk, Mrs. St. John, Mrs. Lennhardt—I am guessing.

"Q. And what was Mrs. St. John's first name?

"A. Mrs. William B.

"Q. Can you recall the month of the year that it was?

"A. It seems to me it was a cold month, as I remember it was cold outdoors, and the latter part of the year.

"Q. In the fall of 1954?

"A. Fall, probably, yes."

Page 132.

"Q. Specifically in reference to the comparisons that were made between the book and the incident, how did this comparison come up?"

And then Mr. Garment put in:

"To the extent that you can recall.

"A. To the extent that I can recall, I believe it was said to me, 'Your incident has been written in a book. Haven't you read it?'"

[fol. 302] Page 135.

"Q. What did Mrs. MacKenzie say with respect to the comparison between the book and the incident at Whitemarsh?

"A. 'Your story has been written up in a book. Have you read it? Think of it, your incident has been written up in a book.' I said, 'This is not our story. We have nothing to do with that story.'

"Q. Upon what did you base your statement that had nothing to do with your story?

"A. The fact that we had not told anybody our story.

"Q. Did you ask her upon what she based her statement 'Your incident has been written up'?

"A. I don't remember.

"Q. You don't remember?

"A. No, I don't remember.

"Q. Then, as I get the sequence, she said, 'Your incident has been written up in a book.' And you said, 'This is not our incident,' then, and you had never read the book?

"A. That is right.

"Q. Was there any explanation by anybody present with respect to the fashion in which your incident had been written up?

"A. I can't tell you exactly when or where or by whom that I heard about the book the first time, that I knew of the way in which it had been handled. I had been given enough information to know that it was very simple. But I knew that I had not or Mr. Hill had not given any information to be written up in a book. Whatever information would come would have to come from newspapers or what-[fol. 303] ever publicity they might find, but not direct from me or Mr. Hill. In other words, my objection would be to that 'Is it your story as given by you?'

"Q. Where did you learn of these similarities between—

"A. I said I can't tell you when or where.

"Q. But you had learned of the similarities at the time of this meeting, this conversation that took place with Mrs. MacKenzie?

"A. As far as I can remember, I probably said, 'Oh, yes, really?' and she said, 'Yes,' and probably told me about the story, and before we were through with the party that day I had told her and explained to all of them that whoever had written the book had not based any of his writings on any information that he had received from me or from Mr. Hill, and that it was not our story.

"Q. Do you mean that it was not your story in the sense that you had not authorized the story?

"A. Yes. I wouldn't know what the author's feelings were. If he felt that was our story or not I certainly wouldn't know.

"Q. That was all that you meant, that you had not authorized the author?

"A. We had nothing to do with the writing of that story.

"Q. I understand. You do remember having been informed at that time that there were a number of similarities between your story and the story in the book?

"A. Yes.

"Q. Do you remember what those similarities were?

"A. There were three convicts, their house was in a secluded spot, the occupants of the house were held hostage. [fol. 304] "Q. Those were the only similarities brought to your attention?

"A. I think they are very good.

"Q. When you said that you had not authorized the story, did you feel at the time that it was your story but that you had not authorized it? Did you feel the book was your story?

"A. I felt it was very similar.

"Q. Did you feel it was basically the story of the incident?

"A. It could have been basically the story of the incident.

"Q. Did you feel it was?

"A. When I hadn't read it, could I say?

"Q. You stated it wasn't at that conference.

"A. Yes, I guess I had feelings that it was.

"Q. Did anybody besides Mrs. MacKenzie say that 'This is your story written up'?

"A. Yes.

"Q. Who else said that?

"A. Mrs. John Anderson, who is also a resident of Philadelphia. I think she sent a clipping which stated that the book had been written, if I remember—and I can't word it, as far as I can remember—the story had been taken from an incident that happened to a family living in Whitemarsh, and this is written in a Philadelphia paper which she would be reading, living there, and she also happened to be a good friend of mine that I knew.

"Q. Prior to that time had anybody else mentioned to you that they thought this was your story?

"A. I can't remember. I don't remember when was the first time. I don't remember when exactly, the first time, or where or what person. But I know that shortly after [fol. 305] the book came out there were many of our close friends who heard of the incident. The children would talk,

naturally. They knew it all as well. They asked, they were interested, and their friends."

Page 32.

"Q. Did anybody else on any other occasion after the book appeared bring up the incident of 1952 with you?

"A. Yes.

"Q. Who was that?

"A. Close friends.

"Q. On several occasions?

"A. I would say more than one. That would make it several, yes.

"Q. Then I take it that you recall the more than one occasion?

"A. Yes.

"Q. Were those occasions after this MacKenzie conversation that you told us about?

"A. Before and after.

"Q. Before and after?

"A. After the book. I can't tell you when she came with the book, how soon after it was.

"Q. Who else brought it up, as you recall?

"A. Close friends. You want names?

"Q. Yes, I do.

"And I would like approximate times, if you can give it to me, and the places.

"A. I can't give you the approximate times and places. The parties—well, I can give you Mrs. William St. John, my next door neighbor.

"Q. In Connecticut?

"A. In Old Greenwich.

"Q. Yes?

"A. Mrs. Garrett Kirk.

"Q. Also a lady who lives in Old Greenwich?

[fol. 306] "A. Yes. And then Mrs. M. K. MacKenzie, Elsie's sister.

"Q. She is one of the ladies who sat by?

"A. Yes, but we hadn't mentioned her name. She is a close friend who lives in Greenwich, Mrs. Richard Cluett. I think

some of the husbands of these wives had also brought it up at parties when the two of us, Mr. Hill and I, would be together. We were being connected with the book.

"Q. When you say you were being connected, were you asked about it or were you being told what their impressions were?

"A. We were told, being told their impressions, and we were being asked about it.

"Q. Do you recall the conversation with Mrs. Kirk, or was there more than one conversation, by which I mean was Mrs. Kirk making it a subject of regular discourse with you?

"A. If we would happen to speak about it, why, I imagine she would ask another question. She is a very dear friend of mine, and there was no time set when we would talk about it. If it was brought up in a group or she wanted to speak to me about it, she would. One question I would receive at times would be, 'Is this your story?'

"Q. What position did you take?

"A. I said, 'That certainly is not our story.'

"Q. And you would point out differences?

"A. Yes. 'Do you mean to say you haven't given any consent to have your story—'

"Q. This is somebody saying this?

"A. This is comments made—'that you haven't given your consent for your story to be written?'

[fol. 307] "'Of course not.'

"My own brother, Mr. Charles Selfridge, who lives not in Greenwich but lives in South Norwalk, and my own sister-in-law and Mrs. William Clarkson, in Darien, and Mr. William Clarkson—'Very interesting, this story.'

"Q. Somebody is saying this?

"A. Yes—'Should be read. And the names they chose and the three convicts—'

"Q. And you kept pointing out differences?

"A. 'It isn't our story.'

"Q. That is what you said, it isn't your story.

"A. It is not our story. At least, we haven't given the story to anyone at any time."

Page 154.

"Q. Did anybody ever write to you with respect to the novel The Desperate Hours?

"A. To me?

"Q. Yes, to you?

"A. My friends?

"Q. Anybody.

"A. Yes.

"Q. Who did?

"A. Friends.

"Q. Do you remember their names?

"A. Mrs. Barhydt.

"Q. I think it would be helpful if you spelled that.

"A. B-A-R-H-Y-D-T.

"Q. Any others?

"A. Would you like a list of friends?

"Q. I think I can save some time here. Would you be good enough to go through your correspondence and collect all the writings that you have with respect to this subject.

[fol. 308] "And Mr. Garment would you produce those for us?

"Mr. Garment: Yes, if there are any, sure."

And my understanding is that there are no such documents; they have been thrown out.

Mr. Garment: I really don't recall.

Mr. Biddle: That's what you wrote to me in a letter, Mr. Garment.

Mr. Garment: Fine, if that's what I said.

Mr. Medina: Page 181.

"Q. Were you aware, Mrs. Hill, of the opening of the play before the publication of the Life article?

"A. Yes.

"Q. Had anybody called it to your attention?

"A. Yes.

"Q. What were the circumstances of that?

"A. To inquire if I knew that this play had opened, had I seen it, was I going to see it.

"Q. Who asked you that?

"A. I can't recall the exact persons.

"Q. Were there a number of persons who made that inquiry?

"A. I suppose there were several.

"Q. You don't remember their names?

"A. No.

"Q. Did they connect you or your family with the play?

"A. If they did they had presumed that themselves. They chose to decide that it was about the incident.

"Q. Did they?

"A. Yes, they did.

"Q. This was before the publication of the Life article.

"A. I say they presumed and would question me, and I answered any questions that I received: That we had never [fol. 309] given anyone any information about our incident.

"Q. In connection with those conversations that you had prior to the publication of the Life article but in connection with the play, did anyone point out to you any similarities between the play and the Whitemarsh incident?

"A. I believe they did.

"Q. Do you recollect what those similarities were?

"A. That the family's name was very similar to ours; that there were three convicts that had come into the family's home. Then they began to question me, was this the same, was that the same.

"Q. Do you mean was this particular incident in the play the same as what happened to you?

"A. Yes. Did it last for three days or 19 hours, which did it?

"Q. Did anybody either in connection with the novel or the play, and this is prior to the publication of the Life article, mention to you the name used in the play and in the book as Hilliard?

"A. I imagine they did. That was the name used.

"Q. What was your reaction to that?

"A. I thought it was very strange that out of the thousands, they chose to use the name Hilliard. Wouldn't you?

"Q. Why did you think it was strange?

"A. There are a lot of names.

"Q. Let me ask you this. Was it because of the similarity to your name?

"A. Hilliard to Hill?

[fol. 310] "Q. Yes.

"A. Yes. And also my feeling, my interpretation and feeling that there was a similarity in the play and in the book.

"Q. Did you feel that the number of similarities was beyond coincidence?

"A. I did."

That's all I have at this time, your Honor.

Mr. Garment: We have some reading, and I will play the role of the witness.

* * * * * * *

(Mr. Garment then took the witness stand.)

Mr. Zoeller: I would like to start at page 31, Mr. Medina, just before that section on page 32 that you read.

Referring to the book:

"Q. I am asking you what your reaction was, if you please, Mrs. Hill.

"A. I am telling you the reaction as she explained part of the book. 'As I have told you, I have not read the book.' I, in turn, to show my feelings explained to her the difference in the situation.

"Q. What differences did you point out to her?

"A. The size of the family, incidents that the convicts had with the members of the family involved, and I also had the feeling that we handled the situation very well.

"Q. And you said so at the time?

"A. I said so.

"Q. Now, I ask you, aside from the explanation which you made to her of the contrast between what had happened at your home in Whitemarsh and what Mrs. MacKenzie indicated to you was in the book, I want you [fol. 311] to tell us now what your reaction was to Mrs. MacKenzie's bringing up the subject at all at Old Greenwich in 1954 on the occasion of this social visit.

"A. I don't think I particularly like to have her think or anyone else think that we were responsible for a story such as had been written; that we were certainly not responsible for it. That was the feeling I had.

"Q. In other words, did you say so?

"A. I am sure I did.

"Q. In other words, you indicated to her that in your viewpoint the book had no reference to what had occurred to you at Whitemarsh in 1952. Is that right?

"A. Yes."

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(The trial was then recessed until April 13, 1962, at 10:00 a. m.)

April 13, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

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STANLEY R. DEAN, M.D., 247 Ocean Drive West, Stamford, Connecticut, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

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[fol. 312] Q. Mr. Medina asked you about the September 1952 incident and put certain questions to you about the harrowing nature of that incident.

A. Yes.

Q. When Mrs. Hill commenced her treatment with you, did you endeavor to obtain some objective evidence as to what her reaction had been at the time of the incident?

A. Yes, sir, I did.

Q. Briefly, tell us what you did without going into any statements that were made.

A. Well, I wanted to try to assess just how much of an effect this incident with the convicts did have on her state of mind, and although I listened to her history, I asked her if she could furnish any other indication of her state of mind, and she said that she could, that she had written to a friend of hers—I believe she called her Aunt Cokie—very shortly after the incident and was able to get a copy of the letter for me.

Q. Did she get a copy of that letter for you?

A. Not a copy, but the original.

Q. I mean the letter itself.

A. Yes, sir.

Q. In her own handwriting?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, I have.

Q. Is it in the original envelope?

A. It is.

Q. What date mark does it bear?

A. September 15, 1952, only a few days after the convicts broke in.

Q. And is that letter within that envelope in Mrs. Hill's handwriting?

A. I believe so.

Mr. Garment: Your Honor, I offer that in evidence.

Mr. Medina: I object to it.

The Court: I am going to overrule the objection. This comes under the same heading as statements made to the [fol. 313] doctor to determine the history. This is the treating doctor, and the rule is different with regard to that, than what we call a testifying doctor, and therefore I am going to overrule the objection.

Mr. Medina: It doesn't relate to a statement actually made to the doctor, your Honor.

The Court: He has said that it did. This is one of the bases for showing what her state of mind was at that particular time.

Mr. Garment: Right at the time of the actual incident.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 33.

(The envelope postmarked September 15, 1952 and letter contained therein addressed: "Dearest Cokie" received in evidence as Plaintiffs' Exhibit 33.)

The Court: When did you get this letter, Doctor, from Mrs. Hill?

The Witness: My recollection is about a month after I began to treat her, your Honor.

Mr. Garment: "Sunday night"—that would be September 14, 1952.

"Dearest Cokie, perhaps you would like to know first hand that our family is safe and unharmed after our Thursday experience. I can't write it now for it reads like a story book. But in spite of being nearly frightened to death we are really fine.

"The convicts were armed when they pushed in our kitchen, but from the moment they stepped in our house [fol. 314] they made it clear they wanted only to hide out through the day, leaving at darkness.

"They didn't add, of course, 'taking one of our cars, too.' They were courteous to me, kind to the children, respectful of our furniture and considerate of our feelings, as much as would be possible under such circumstances.

"Jimmy was a little man. There wasn't a tear or scream from any of us for nineteen hours. I suffered only in fear of what they might do at any moment. We have been surrounded by police, FBI, newspaper reporters and so forth. We are under guard as long as the men are at large.

"Don't worry. As Jimmy whispered during that afternoon, 'Today I know there is a God.' It was our prayers that saved us.

"All our love, Elizabeth."

That's all.

* * * * * * *

HOWARD ERSKINE, 2900 Hutton Drive, Los Angeles, California, one of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jackson:

Q. Are you and Joseph Hayes the only general partners in The Desperate Hours Company?

A. Yes.

Q. Did you have anything to do with the writing of the Life article?

A. No.

Q. Did you suggest that the article contain or did not know that the article would contain the name "James Hill" or a reference to the Hills?

A. No, I did not.

[fol. 315] Q. Did you hear Joseph Hayes make any such suggestion?

A. No, I did not.

Q. Did you use the Life article in any way?

A. No, I did not.

Q. Did The Desperate Hours Company use the article in any way?

A. No, they did not.

Q. Did the show The Desperate Hours pay off?

A. No, it did not.

Q. When did the show close?

A. In July of 1955.

* * * * * * *

(Mr. Garment continued with the reading from the deposition of Elizabeth Selfridge Hill.)

"Q. Tell us again in your own words what your reaction was to the article when you read it. I am speaking of the particular article of which you complain in your complaint.

"A. I found the article most distressing.

"Q. Yes?

"A. It tied the whole thing up in bold print, black and white; there was no—'No, it isn't; yes, it is.' It was there. I could see the story again, all the questions and answers, what it would mean to the family, questions and answers. And again, why should such a thing have to happen? When I have given no permission, Mr. Hill has given no permission. Someone has taken it upon himself or themselves to do something. This is without their power."

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MOTION TO DISMISS AND DENIAL THEREOF

Mr. Medina: Your Honor, for the motion at the end of the plaintiffs' case, I move to dismiss on the general ground of failure of proof and on the specific grounds that it [fol. 316] now affirmatively appears, first, that the connection between the play and the incident was not fictitious and, in any event, was not tenuous; secondly, that the defendant believed it to be true; and, thirdly, that the article was published as a report of a newsworthy event in the entertainment field and not with any purpose to sell tickets or promote the play.

In addition, I have a separate ground for dismissal as to the action by Mrs. Hill in that there was no use made of her name or photograph.

Additionally, I move to strike the testimony regarding Mrs. Hill as not being connected because of that lack.

The Court: I will deny all of your motions, particularly the motion with regard to Mrs. Hill, on which I have ruled earlier.

Mr. Medina: I am just putting it on the record with those other grounds.

The Court: I think that it's a question of fact as to whether the Life article was true or whether an inference could be obtained from reading it that it was not true. We will see what the jury has to say, sir; and then after they come in I will allow you to argue on the motion to set the verdict aside, if you should make such a motion or find it necessary.

Mr. Medina: I also renew that motion for my motion at the end of the entire case. And I understood your Honor was going to reserve decision on the motion at the end of the entire case.

The Court: I thought I would; but I have decided, in my opinion, there is enough to go to the jury as against all [fol. 317] of these defendants. Therefore, I am going to deny the motions.

However, as I believe you know, this doesn't proscribe me from ruling differently after the jury has returned a verdict. I am simply ruling at this time that there is enough to go to the jury on it. The plaintiffs have made out a cause of action against all of these defendants, and now it becomes a question of fact for the jury.

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April 17, 1962

(Appearances same as previously noted, except for Mr. Berman.)

CHARGE OF THE COURT TO JURY

The Court: Before I start my charge, one of the lawyers has said or indicated to you that this is an important case, either very important or important.

In fairness to all the lawyers, I might say that, of course, it is important, just as every case is important. It is no more important, it is no less important than any other case that has been tried in this court. This very important to the parties, to the lawyers, and certainly to the Court.

So, I don't want you to feel, however, that because a particular lawyer may have emphasized the importance, that doesn't necessarily mean it makes it more important.

There is one other point. It is called to my attention one of the jurors has been reading a book, and I am talking about you now, Juror No. 4, by a lawyer, who is sup- [fol. 318] posedly a prominent lawyer, and who talks in his book about suits along this line.

I want to caution you now. I believe you understand this, that I will give you the law. Nothing that you may have read anywhere, nothing that you may have seen in the movies or television is to influence you in any way as to the law which should be applied.

I am the sole judge of the law; you are the sole judges of the facts.

I tell you what the law is and, whether you agree with it or not, and whether you may have seen something in print or otherwise which doesn't go along with what I say, I want you to just let that out of your mind, because while if I am wrong, there are Appellate Courts to correct me, but certainly not any of you jurors—do you all understand that now?

So, if you have read anything outside that may conflict with what I tell you, with all due modesty, I might say I am right and the writer of the book is wrong.

Mr. Garment, I am going to deny your request for a special verdict. I will, however, give your requests to the stenographer so it may be incorporated in the record so the record may be accurate.

Mr. Garment: Thank you, your Honor.

The Court: Ladies and gentlemen of the jury, the plaintiffs, James C. Hill and Elizabeth Selfridge Hill bring this action to recover money damages from the defendants Joseph Hayes, Howard Erskine, The Desperate Hours Company and Time, Incorporated, for damages which the plaintiffs claim they sustained due to the violation of the plaintiffs' right of privacy under Section 51 of the New York Civil Rights Law.

[fol. 319] In September 1952 the plaintiff and their five children were held captive for 19 hours in their home in Whitemarsh Township, Pennsylvania, not far from Philadelphia, by three armed convicts who had escaped from Lewisburg Penitentiary.

The plaintiffs admit that the experience was a frightening and harrowing one, but claim there was no violence, no profanity, nor were the mother or daughters molested or threatened in any way.

The convicts arrived about 8:30 in the morning and left about 3:30 the following morning. The incident was widely reported in the press, with the cooperation of Mr. and Mrs. Hill, who gave to the press accurate details of what occurred during the 19 hours they were held captives.

The plaintiffs claim, however, that they refused offers from radio and television shows, columnists and magazine writers, to cash in on the incident by telling their experiences, for money.

Subsequently, in 1952, they moved to Connecticut where they now live. This move, however, was not wholly prompted by the incident.

In 1953 the defendant, Joseph Hayes, wrote a novel, The Desperate Hours, about a family called Hilliard, who are held captive by escaped convicts. The story is melodramatic containing violence and profanity.

You have heard in detail from the witnesses the details of the novel, and you have seen the motion picture made from it. In 1954 this defendant—that is the defendant Hayes—adapted his novel into a play by the same title. The play was tried out in Philadelphia in January 1955.

The article of which the plaintiffs complain appeared in the February 28th, 1955 issue of Life Magazine, published [fol. 320] by Time, Incorporated. You have been made familiar with the contents of the article and with the photographs published as a part of the article.

The plaintiffs claim that this article violated the right of privacy conferred on them by the statutes of this state.

They claim that the article in question did not report news but took advantage of plaintiffs' name and private life for advertising or commercial purposes or for purposes of trade, and to increase the commercial value of Life Magazine, and that it involved a publicity device promulgated in collaboration with the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, a co-partnership, for the purpose of increasing the financial return of the play and of the moving picture of the same title, and that the James Hill family was mentioned in the article for that purpose.

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The defendant Time, Inc., the publisher of the magazine Life, denies it is in any way liable to the plaintiffs. It denies that the article in question was substantially fictitious or that it was published for purposes of trade, or advertising.

Time, Inc. claims that the article in Life reported news as a matter of general interest to the reading public. This defendant claims that the book and the play, The Desperate Hours, was called to the attention of its entertainment editor, who decided to include the article in the magazine, and since the play was trying out in Philadelphia, he decided to have photographs taken in the house where the plaintiffs had lived in Whitemarsh.

The defendant Time, Inc. claims that the opening of the play and the happening of the real-life incident were at the [fol. 321] time of the publication of the article newsworthy and constituted news of general interest, and that the article was not wholly nor substantially fictionalized, but stated facts as known to the writer of the article, and which he, the writer, believed to be true.

The defendant Time, Inc. denies, also, that the article in question was published by it as part of an advertising campaign in which Life and the other defendants were seeking to promote patronage for the play, The Desperate Hours.

The defendant Time, Inc. denies that it was at all interested in promoting patronage for the play and denies

that it acted in concert with the author and the producers of the play when it published the article in question, or that it was done for any other trade purposes.

The defendant Time, Inc. denies, also, that the publication of the article in question was the proximate cause of the injuries claimed to have been suffered by the plaintiffs.

The defendant Time, Inc. denies, also, that the plaintiffs suffered any actual damage from the publication of the article in question.

The defendant Time, Inc., accordingly, denies that it is liable to the plaintiffs in any amount.

The defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, whom I will refer to as the theatrical defendants, denied that they in any way violated the plaintiffs' right of privacy.

These defendants deny that the article in question violated the plaintiffs' right of privacy. They claim that the opening of the new play was newsworthy, as a theatrical event, and the real-life incident was also newsworthy.

[fol. 322] Moreover, these defendants contend that they are in no way responsible for the contents of the article or for the mention of the plaintiffs therein.

They claim that the theatrical editor of Life contacted the defendant Hayes and told the latter that the magazine contemplated the publication of the article.

Hayes was asked to locate the house where the family involved in the real-life incident had lived. Hayes made the arrangements for the use of the house and, when the photographs were taken, these defendants furnished the actors from the cast of The Desperate Hours and they also paid the stagehands who were used in connection with the taking of the photographs.

These defendants contend that this did not constitute collaboration, in preparing the article as a part of an advertising campaign to increase the patronage for the play, and deny that they had anything to do with the writing of the article or, in fact, that they ever even saw the article before it was published.

These defendants deny that the article was an advertisement for the play. They allege that they did not solicit Life to publish the article; that they had no voice in its preparation or content and did not pay for it.

They deny that they ever made any use of it. They contend that merely because the article was favorable did not convert the article into an advertisement.

These defendants deny that the publication of the article was the proximate cause of the injuries claimed to have been sustained by the plaintiffs.

They deny, also, that the plaintiffs suffered any actual damage from the publication of the article.

The theatrical defendants, accordingly, deny that they are liable to the plaintiffs in any amount in this action.

[fol. 323] You, as the triers of the facts, are required to seek out of all the evidence the truth concerning the facts involved.

You must disregard any colloquy between counsel or between the Court and counsel. In deciding the questions of fact, you will use your common sense and ordinary experience in life.

The plaintiffs have the burden of proving their case substantially as they have pleaded it in their complaint. They have the burden of proving by a fair preponderance of the credible evidence—that is the believable evidence—that the published article, so far as it referred to them, was a violation of their right of privacy.

By burden of proof is not meant the number of witnesses called by one side or the other, or the number of exhibits offered in evidence. The law does not count evidence, but weighs it.

By a fair preponderance of evidence is meant such an amount of credible evidence as, when measured by the evidence opposed to it, brings truth and conviction to your minds.

If the evidence is so evenly balanced that you are unable to say which side is entitled to your verdict, the plaintiffs

have failed to sustain the burden of proof and your verdict must be in favor of the defendants.

It is your duty to deliberate and to determine this case in accordance with the evidence; that is the oral testimony given by the various witnesses together with the natural inferences which may be drawn therefrom, and any exhibits which may have been received in evidence.

In determining the facts, the law lays down certain rules for your guidance and assistance.

[fol. 324] In this case, as in every case, you will find testimony given by interested witnesses. The parties to the litigation are, of course, interested witnesses, but a witness not a party to the action may still be interested on account of friendship or relationship or employment and, therefore, it becomes important for you to apply the test of credibility to the testimony of such witness.

This does not necessarily mean an interested witness will not tell the truth; it does mean, however, that you are to determine from the demeanor of such witness on the stand, from his or her frankness or lack of it, and from such other tests as your experience may dictate, where or not the interest of the witness is such that the witness is liable, for any reason whatsoever, to color the testimony for the benefit of such witness or for the benefit of the party by whom the particular witness was called to testify.

You must determine what weight shall be given to the testimony of such witnesses. If you believe that a witness has willfully testified falsely to a material fact, you are at liberty to disregard all of the testimony of that witness or you may, if you see fit, accept that which you believe to be true and reject that which you believe to be false.

You have heard the Court direct that certain testimony be stricken. Testimony stricken from the record must be absolutely disregarded by you.

In determining the facts, you may also apply the test of probability. Probability is one of the most important factors in arriving at the truth.

In deciding what the facts are, you must rely on your own recollection of the evidence. Even though I have related during the course of this charge what I think the facts are, you need not be controlled by what I say on this point. [fol. 325] What counsel have said to you during the trial or when they summed up the testimony is merely their argument; it is not evidence, and must not be treated as such by you.

You must determine the facts without prejudice or bias, as a verdict founded on such elements are not sanctioned by the law.

Likewise, you must not be sympathetic in arriving at a verdict. A verdict based on sympathy is not only contrary to law but is contrary also to the oaths you took when you became jurors in this case.

Different versions of the facts and circumstances have been related by the various witnesses. You must decide which version is the truth.

No party to any litigation is obliged to call any witness, and the failure to do so is not evidence and does not prove any fact.

However, if a party does not take the witness stand or does not call a witness shown to be under his control, and the failure to do so is unexplained, you may assume that the testimony by such witness or party would not have contradicted any testimony unfavorable to his side of the case and, in that sense, such testimony would not have been favorable to the party who did not take the stand or call the witness.

* * * * * * *

Section 51 of the New York Civil Rights Law, sometimes referred to as the privacy law, provides that any person whose name, portrait or picture is used within the state for advertising purposes, or for the purpose of trade, without written consent first obtained, may sue and recover damages for any injuries sustained by reason of such use, and if the defendant shall have knowingly used such per-

[fol. 326] son's name in such manner as is forbidden, the jury in its discretion may award exemplary or punitive damages.

There is no dispute here that the article was published in this state and that no consent in writing was obtained from the plaintiffs.

It is for you to determine as to the defendant Time, Incorporated whether the plaintiffs' names were used in the articles for purposes of trade or advertising.

As to the defendants Hayes, Erskine and The Desperate Hours Company, if you find against the defendant Time, Incorporated, then you must determine whether these defendants collaborated in the publication of the article in question for the purpose of increasing the patronage of the play.

This is not an action for defamation, and it makes no difference whether the article was defamatory or complimentary.

This case is not based on the book written by the defendant Hayes, called The Desperate Hours, or the play or the motion picture adapted from it, and the similarity or dissimilarity between the book, play or motion picture and the real-life incident involving the Hills, makes no difference in this case, except in considering the accuracy of the Life article of February 28, 1955, as to which I will refer later.

It is for you to determine whether, in publishing the article, the defendant Time, Incorporated altered or changed the true facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially fiction or a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public so as to increase the circulation of the magazine or for some other material benefit.

[fol. 327] If you feel that the defendant Time, Incorporated did publish the article, not to disseminate news, but was using plaintiffs' names, in connection with a fiction-

alized episode as to plaintiffs' relationship to The Desperate Hours, your verdict must be in favor of the plaintiffs.

Of course, an incidental mistake in the statement of a fact or facts does not render the defendant liable. The privacy law is not violated merely because of some incidental mistake of fact, or some incidental incorrect statement.

Before the plaintiffs can be entitled to a verdict against the defendant Time, Incorporated, you must find that the statements concerning the plaintiffs in the article constituted fiction, as compared with news, or matters which were newsworthy, and that they were published for purposes of trade; that is to increase circulation or enhance the standing of the magazine with its readers, or you must find that the defendant Time, Incorporated in the preparation and publication of the article did so to advertise The Desperate Hours for the purpose of increasing the play's patronage.

Unless you find that the defendant Time, Incorporated published a fictionalized article for its own purposes or that it published the article in question as an advertising medium to increase patronage for the play, your verdict must be in favor of the defendant Time, Incorporated.

If, on the other hand, you are satisfied from the evidence that the defendant Time, Incorporated was not, so far as the plaintiffs are concerned, reporting fairly past or current events, but was publishing a fictionalized account mentioning the names of the plaintiffs for the purposes of trade; that is for the publisher's profits through increased circulation, induced by exploitation of the plaintiffs, or that [fol. 328] the defendant Time, Incorporated published the article for the purpose of advertising the play, your verdict should be in favor of the plaintiffs against the defendant Time, Incorporated.

Now, as to the theatrical defendants, unless you find a verdict against the defendant Time, Inc., you cannot find a verdict against these defendants. If you find that the defendant Time, Inc. referred to the plaintiffs in the article

for the purposes of trade, as I have defined that phrase for you, you need not by that fact alone find a verdict against the defendants, the so-called theatrical defendants.

If you find a verdict against the defendant Time, Inc. on the ground that it referred to the plaintiffs in the article for the purposes of advertising, namely, to increase the patronage of the play, you will then consider whether the evidence proves that these so-called theatrical defendants collaborated with the employees of Time, Inc. in the publication of the article.

If you are satisfied that these defendants did collaborate with the employees of Time, Inc. in the preparation and publication of the article as a part of a campaign to advertise the play and increase its patronage, then your verdict should be in favor of the plaintiffs against the so-called theatrical defendants.

If, on the other hand, you are not satisfied these defendants collaborated with the employees of Time, Inc. in the preparation and publication of the article in question, then your verdict should be in favor of these so-called theatrical defendants.

If, after a careful consideration of all the evidence, you find a verdict in favor of the plaintiffs you will award to each plaintiff as compensatory damages such a sum as you [fol. 329] believe will fairly and reasonably compensate such plaintiffs for the actual damages you find he or she sustained as a direct result of the wrong committed against him or her by the defendants or any of them.

* * * * * * *

The Court passes only on questions of law. While you are the sole judges of the facts you must take the law from the Court.

* * * * * * *

EXCEPTIONS

Mr. Garment: I have no exceptions to the charge, your Honor. . . .

The Court: Mr. Medina, do you have any exceptions to the charge?

Mr. Medina: I respectfully except to your Honor's failure to charge in connection with numbers 1, 3, 5, 6, 7, 8, 13, and 14, and to your Honor's charge insofar as it is inconsistent therewith.

I would also like to call your Honor's attention to the first two sentences of charge number 4 and ask that your Honor reconsider those first two sentences.

The Court: Charge number 4?

Mr. Medina: The first two sentences, yes, sir.

The Court: Well, I think I have covered it, but I will read the first sentence.

Plaintiffs have conceded that they were the family held hostage—and, as I say, I believe I covered it—at Whitemarsh in 1952 as reported in the Life article, and that their experience was a headline story of interest to readers across the country. I have covered that.

Mr. Medina: The second sentence, your Honor, to which I refer.

Mr. Garment: I would object to that.

[fol. 330] The Court: No; I am not going to say any more than I have already said.

Mr. Medina: I respectfully except.

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Mr. Medina: May I call to your attention our request number 14 and ask you to reconsider with respect to that charge.

The Court: No; that request is denied.

Mr. Medina: I respectfully except.

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(At 10:50 a.m. the jury retired.)

(At 11:55 a.m., the jury returned.)

The Court: I have received a note from this jury, which will be marked as a Court's exhibit. It asks for the Judge's

charges. I can't give you that, but I will read to you any portion of the charge you feel you want.

* * * * * * *

CHARGE OF THE COURT TO JURY

Can you tell me specifically what portion of my charge you want read?

Juror No. 7: The definition of trade, as stated in the Law of Civil Rights.

The Court: I don't think I have defined it specifically, because you are a jury of normal intelligence.

As a matter of fact, as I have had occasion to observe, I think this is a highly intelligent jury, but I will read you that, what the statute says about it and, if that doesn't answer your question, I will read a little further.

Section 51 of the New York Civil Rights Law, sometimes referred to as the Privacy Law, provides that any person [fol. 331] whose name, portrait or picture is used within this state for advertising purposes or for the purpose of trade, without written consent first obtained, may sue and recover damages for any injuries sustained by reason of such use, and if the defendant shall have knowingly used such person's name in such manner as is forbidden, the jury in its discretion may award exemplary damages.

I went on to tell you that it is for you to determine as to the defendant Time, Inc., whether plaintiffs' names were used in the article for purposes of trade or advertising and, generally, as I applied it in my charge—and if I am wrong I will permit you lawyers to correct me or call my attention to anything else I may have said—this means with regard to Time, it was done in this particular fashion, either for the purposes of enhancing the circulation of the magazine or for the purposes of making it more interesting to its readers and thus enhance its circulation, or for the purpose of creating patronage for the play, the additional purchase of tickets.

And, in so far as the other defendants, the theatrical defendants are concerned, they must have collaborated with

the defendant Time for that purpose—that is the purpose of selling more tickets to the play—because that would be all that they are interested in.

Do you think that covers it?

Mr. Medina: Your Honor should also point out to the jury if the defendant Time was reporting upon a newsworthy event in the entertainment field, that is not a trade or advertising use.

The Court: I think I have mentioned that in my charge, that the trade use is only what the statute talks about. When it mentions the word "trade" it means what you might call a commercial use; in other words, it was to the [fol. 332] material advantage of the defendant Time to write this article in such a way as to enhance or increase the circulation of the magazine.

Mr. Medina: Your Honor, I do think that that gives somewhat a misleading impression in that if any matter appears in a magazine which is a matter of news or general interest it, obviously, in one way enhances the circulation of the magazine.

The Court: That's true.

Mr. Medina: But obviously is not a trade or advertising use.

The Court: That's right, but I told this jury if they found this was a report of a news article and reported in a newsy fashion and was not fictionalized in any way, it can't find for the plaintiff.

Mr. Garment: In all fairness, in requests 5, 6 and 7 we endeavored, in fairness to the defendants and ourselves, to define this complicated word "trade" that appears in the statute.

May I simply draw that to your attention?

The Court: I have taken as much as I think should be used in this charge. Let me go a little further.

It is for you to determine as to the defendant Time, Inc. whether plaintiffs' names were used in the articles for purposes of trade or advertising. Then, as I have indicated earlier, with regard to the theatrical defendants, if you find

against the defendant Time, Inc., you must determine whether these defendants collaborated in the publication of the article in question for the purpose of increasing the patronage of the play.

It is for you to determine whether, in publishing the article, the defendant Time, Inc. altered or changed the true [fol. 333] facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public, so as to increase the circulation of the magazine, or for some other material benefit.

Does that cover what you had in mind?

Mr. Garment: Your Honor, I respectfully request you instruct the jury that the question of trade, as claimed by the plaintiffs here, relates, we claim, to the false connection between two news events, namely, the play and the Hill incident, inasmuch as it said that The Desperate Hours was the story of the Hill incident, and that our claim is that the total article must be read, and the jury must determine whether it conveyed the basically false impression as to the relationship of the Hill family to The Desperate Hours.

The Court: I have covered that in my charge. In fact, I see it here—but I don't believe that answers the question—the question was, what is meant by the word "trade" as used in the statute, and I think I have covered that.

Mr. Medina: As long as it is clear a news use in a normal newspaper, or news magazine, does not come within the statute, I think—one moment, please, Mr. Garment—I want to make sure the jury understands that, because I think that is what is troubling the jury.

Mr. Garment: Your Honor, if they are telling news, if they are telling news, purporting to tell news, but have as the basis for the use of the individual's name something

that is spurious or essentially false that, we contend—and I think the law is clear—it is for trade purposes.

The Court: I think it is covered. I am going to reread this portion I just read for you. It is for you to determine [fol. 334] whether in publishing the article the defendant Time, Incorporated altered or changed the true facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public so as to increase the circulation of the magazine, or for some other material benefit.

You made a suggestion, Mr. Medina. I am going to read further on that point.

Before the plaintiffs can be entitled to a verdict against the defendant Time, Incorporated you must find that the statements concerning the plaintiffs in the article constituted fiction, as compared with news or matters which were newsworthy, and that they were published for purposes of trade; that is, to increase the circulation or enhance the standing of the magazine with its readers—then I go on with regard to the theatrical defendants—or you must find that the defendant Time, Incorporated, in the preparation and publication of the article, did so to advertise The Desperate Hours for the purpose of increasing the play's patronage.

I think that covers the point you people had in mind.

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(At 12:20 p.m., the jury retired.)

AFTERNOON SESSION

(At 5:25 p.m., the jury entered the courtroom.)

Court Clerk Sragow: Mrs. Wetzler, would you rise, please? Ladies and gentlemen of the jury, have you reached a verdict?

Mrs. Wetzler: We have reached a verdict.

Court Clerk Sragow: How do you find?

[fol. 335] VERDICT

Mrs. Wetzler: In the case of Hill and Hill vs. Hayes, Erskine and The Desperate Hours Company, we find for the defendant. In the case of Hill and Hill vs. Time, Incorporated, we find for the plaintiff Mrs. Elizabeth Selfridge Hill, in the sum of $75,000 for compensatory damages, and for the plaintiff, James Hill, $50,000 for compensatory damages.

In regard to the question of punitive damages against Time, Incorporated, we find for the plaintiff in the sum of $50,000.

Court Clerk Sragow: Which plaintiff?

Mrs. Wetzler: Hill and Hill.

The Court: There were two plaintiffs, there were two plaintiffs, as you know. You indicated that in your verdict for compensatory damages.

As to the punitive damages, which plaintiff is it, or is that for the two plaintiffs. What's your verdict?

Mrs. Wetzler: Do you mean for Mr. and Mrs. Hill?

The Court: Yes.

Mrs. Wetzler: The two plaintiffs, yes, half and half.

Court Clerk Sragow: $25,000 for each?

Mrs. Wetzler: Yes.

Court Clerk Sragow: Is that a unanimous verdict?

Mrs. Wetzler: No, sir.

Court Clerk Sragow: Ten to two?

Mrs. Wetzler: Ten to two.

Court Clerk Sragow: May I get the first part? As against the defendants Hayes, Erskine, and The Desperate Hours Company, you found for the defendant?

Mrs. Wetzler: Unanimous.

Court Clerk Sragow: That was unanimous?

Mrs. Wetzler: Yes.

Court Clerk Sragow: Ladies and gentlemen of the jury, harken unto your verdict as it stands recorded, you say you [fol. 336] find in favor of the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company unanimously and so say you all.

You say you find in favor of the plaintiff Elizabeth Selfridge Hill against the defendant Time, Incorporated in the sum of $75,000 as compensatory damages and $25,000 as exemplary damages, and so say you by your vote of ten to two.

In the case of James J. Hill against the defendant Time, Incorporated you say you find in favor of the plaintiff for the sum of $50,000 as compensatory damages and $25,000 as punitive damages, and so say you by a vote of ten to two.

* * * * * * *

MOTION TO SET ASIDE VERDICT AND FOR NEW TRIAL

Mr. Medina: May it please the Court, the defendant Time, Inc. moves to set aside the verdict and for a new trial on the ground it is contrary to law, contrary to the evidence, contrary to the weight of the evidence, excessive, on the exception taken at the trial and on all grounds specified in Section 549 of the Civil Practice Act, except inadequacy of damages.

The Court: I am going to deny your motions except, if you will break up your motions, and make a separate motion with regard to the verdict being excessive, I will permit you to submit a brief on that point.

I will reserve decision on all the other grounds you mentioned here.

Mr. Medina: I will move separately on the ground of excessiveness.

The Court: On that motion I will reserve decision. . . .

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(At 5:35 p. m., the case was closed.)

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[fol. 337]

REQUESTS OF DEFENDANT TIME, INC. TO CHARGE

Defendant Time, Inc. requests the Court to instruct the jury, in substance, as follows:

1. Plaintiffs claim that Time, Inc. used their names illegally for advertising purposes and for purposes of trade when it ran the Life story entitled "True Crime Inspires Tense Play". In order for you to return a verdict for either plaintiff on this claim you must first find that the story was wholly fictitious in connecting the crime at Whitemarsh with Joseph Hayes' play and was not reporting either news or anything of general public interest. Stated conversely, if you find that the Life story did report either news or a matter of general interest to the reading public, you must return a verdict in favor of Time, Inc. *Lahiri* v. *Daily Mirror,* 162 Misc. 776, 295 N. Y. Supp. 382 (N. Y. County, 1937) and cases cited in Time, Inc.'s trial memo at pp. 27-29.

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3. Thus, if you find that the similarities between the crime at Whitemarsh (as reported in the news) and the play entitled "The Desperate Hours" would be of general interest to the reading public, you must find that the mention of plaintiffs' name in Life magazine was perfectly proper (*Dallesandro* v. *Henry Holt and Company, supra,* and cases cited in Time, Inc.'s trial memorandum at pp. 33-34) regardless of any error or inaccuracy in the Life story (*Gavrilov* v. *Duell, Sloane & Pearce, Inc., supra,* and cases cited in Time, Inc.'s trial memorandum at pp. 30-33). Under those circumstances, your verdict must be in favor of defendant Time, Inc.

4. Plaintiffs have conceded that they were the family held hostage at Whitemarsh in 1952 as reported in the Life article and that their experience was a headline story [fol. 338] of interest to readers across the country. Thus, plaintiffs through no fault of any of the defendants had become "public figures" about 2½ years before the Life article was published and, in the context of the crime at Whitemarsh, continue to remain "public figures" to this very day. *Sidis* v. *F-R Pub. Corporation,* 113 F. R. D. 806 (2 Civ. 19).

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5. If you find that in mentioning plaintiffs by name the Life article reported either news or a matter of general interest to the public, you must return a verdict for Time, Inc. regardless of what reason you may believe Time, Inc., had for publishing the story. In other words, unless you should first find that the Life article was wholly fictitious in what it said about the plaintiffs, the motives of Time, Inc., in publishing the article can be of absolutely no concern to you in arriving at a verdict. *Humiston* v. *Universal Film Mfg. Co.*, 189 App. Div. 467, 178 N. Y. S. 752 (1st Dep't 1919); *Booth* v. *Curtis*, 15 App. Div. 2d 343, 223 N. Y. S. 2d 737 (1st Dep't 1962), and cases cited in Time, Inc.'s trial memorandum at pp. 36-7.

6. And even if you do find that the statements in the Life article concerning plaintiffs were wholly fictitious, you must nevertheless return a verdict for defendant Time, Inc., if you also find that Time, Inc. published those statements in the belief that they were true. Stated conversely, you may not return a verdict in favor of either plaintiff against Time, Inc., for having used their names *either* for trade purposes *or* for advertising purposes unless you are satisfied by a preponderance of the evidence that the Life article was pure fiction regarding plaintiffs *and* that Time, Inc.'s [fol. 339] employees knew it was fiction at the time the article was published.

7. If from the evidence before you, you find that there is some factual basis for concluding that Joseph Hayes in writing his play entitled "The Desperate Hours" was inspired (whether in whole or in part) by the newspaper accounts of the crime at Whitemarsh *and* that the Life article could reasonably be said to convey that impression to the average reader, you must return a verdict for defendant, Time, Inc., and the same is true even if you find that the language of the Life article is ambiguous in that regard.

8. Before you may return any verdict for either plaintiff against Time, Inc., on the ground that Time, Inc. il-

legally used their name or names, you must not only find that the statements concerning plaintiffs in the Life article were fiction, and known by Time, Inc., at the time to be fiction, but you must also find either (1) that Time, Inc. published that article to "thrill, astonish and move" its readers by a deliberate deception on the reading public and by that means obtain additional profit from extra sales of Life magazine or (2) that Time, Inc. collaborated with the other defendants in the preparation and publication of the Life article as part of an over-all advertising and promotional campaign conducted jointly by all defendants specifically to obtain patronage for "The Desperate Hours". Unless you find Time, Inc. published a deliberate deception for its own selfish purposes or that it acted specifically to obtain patronage for the play, you must return a verdict for defendant Time, Inc.

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[fol. 340] 13. There is no evidence in this case which would justify an award of punitive damages.

Respectfully submitted,

March 29, 1962

Cravath, Swaine & Moore, Attorneys for defendant Time, Inc., 1 Chase Manhattan Plaza, New York 5, N. Y.

Harold R. Medina, Jr., Oliver C. Biddle, Of Counsel.

[fol. 341]

SUPPLEMENTAL REQUEST OF DEFENDANT TIME, INC. TO CHARGE

Defendant Time, Inc., also requests the Court to instruct the jury, in substance, as follows:

14. A person, firm or corporation that uses for advertising purposes, or for purposes of trade, the name of any living person in violation of the statute upon which plain-

tiffs' claim in this case is based would also be guilty of a crime. New York Civil Rights Law #50.

Respectfully submitted,

Dated April 13, 1962

Cravath, Swaine & Moore, Attorneys for defendant Time, Inc., 1 Chase Manhattan Plaza, New York 5, N. Y.

Harold R. Medina, Jr., Oliver C. Biddle, Of Counsel.

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[fol. 342]

EXTRACT FROM CLERK'S MINUTES

(See opposite) ☞

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

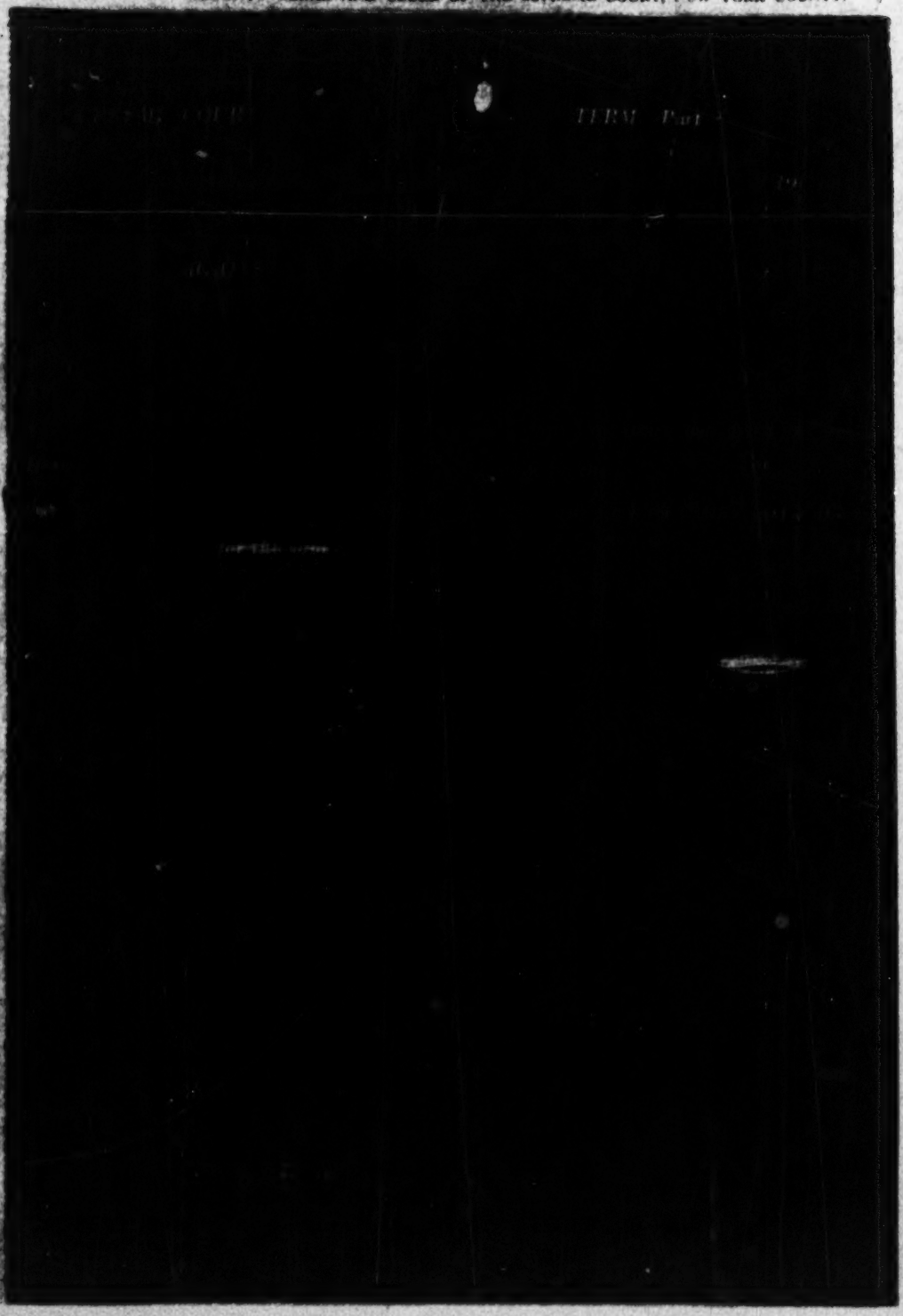
MAY 24 1962

I, JAMES McGURRIN, County Clerk and Clerk of the Supreme Court, New York County, do hereby certify that I have compared the attached paper consisting of 2 pages with the original thereof filed in my office and that same is a correct transcript of the original and of the whole thereof.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal.

NOT VALID WITHOUT SEAL UPON EACH PAGE

COUNTY CLERK AND CLERK OF THE SUPREME COURT, NEW YORK COUNTY.



[fol. 342]

EXTRACT FROM CLERK'S MINUTES

[fol. 343]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

STIPULATION AND ORDER RELATING TO EXHIBITS—
September 30, 1962

It Is Hereby Stipulated that, subject to the Court's approval, the printing of the following exhibits introduced and admitted into evidence at the trial of this action and constituting a part of the Case on Appeal herein be dispensed with and that the originals and five copies thereof be submitted to this Court prior to the argument, viz:

PLAINTIFFS' EXHIBITS

3 Clippings from the September 22, 1952, issue of the Philadelphia Daily News.

4A Clippings from the September 22, 1952, issue of the Conshohocken Recorder.

10 Article appearing at pages 75, 76 and 78 of the February 28, 1955, issue of LIFE magazine entitled "True Crime Inspires Tense Play".

13 Advertisement for motion picture "The Desperate Hours" appearing at pages 30-31 of the October 24, 1955, issue of LIFE magazine.

15 Samuel French edition of "The Desperate Hours, A Play".

25 Envelope marked "Laura Ecker" with newspaper clippings, as follows:

[fol. 344] (1) Theater review entitled "Fiction Out Of Fact" by Joseph Hayes, stamped Jan. 30, 1955.

(2) Theater review entitled "Desperate Hours' Proves To Be Bang-Bang Hit" by Robert Coleman, stamped Feb. 1, 1955.

(3) Theater review entitled "Theater: The Guests From Jail" by Brooks Atkinson, stamped Feb. 11, 1955.

(4) Theater review entitled "Arrival Of An Excellent Thriller" by Richard Watts, Jr., stamped Feb. 11, 1955.

(5) Theater review entitled "'The Desperate Hours': Drama Real Gun-Happy" by John McClain, stamped Feb. 11, 1955.

(6) Theater review entitled "'The Desperate Hours' A Sizzling Melodrama By A Red-Hot Cast" by John Chapman, stamped Feb. 11, 1955.

(7) Theater review entitled "'Desperate Hours' Set Delivers A Tingle" by William Hawkins, stamped Feb. 11, 1955.

(8) Theater review entitled "'The Desperate Hours'" by Walter F. Kerr, stamped Feb. 11, 1955.

(9) Theater review entitled "Exciting Melodrama" by Richard Cooke, stamped Feb. 14, 1955.

Article appearing at pages 31-35 of the February 14, 1955, issue of LIFE magazine entitled "Is This Princess Alive?".

[fol. 345] 27 Article appearing at pages 97, 98 and 100 of the November 24, 1947, issue of LIFE magazine entitled "The Case Of The Winslow Boy".

28 Article appearing at pages 61 and 62 of the December 31, 1945, issue of LIFE magazine entitled "They Were Expendable".

30 Article appearing at pages 60, 62 and 64 of the April 13, 1959, issue of LIFE magazine entitled "A Famous Case Retried".

DEFENDANTS' EXHIBITS

C Photostatic copy of pages 1 and 2 of the September 13, 1952, issue of The New York Herald Tribune, Late City Edition.

D Photostatic copies of pages from six newspaper issues, as follows:

(1) Pages 1 and 2 of the September 12, 1952, issue of the Philadelphia Evening Bulletin, Sports Four-Star Final Edition.

(2) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Inquirer. Final City Edition.

(3) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Evening Bulletin, Night Extra Edition.

(4) Pages 1 and 3 of the September 14, 1952, issue of the Philadelphia Sun Bulletin, Three Star Edition.

(5) Pages 1 and 4 of the September 15, 1952, issue of the Conshohocken Recorder.

[fol. 346] (6) Pages 1 and 20 of the September 22, 1952 edition of The New York Times, Late City Edition.

E Photographic copy of pages 1 and 8 of the November 20, 1952, issue of the Conshohocken Recorder.

F Photographic copy of page 1 of the November 25, 1952, issue of the Conshohocken Recorder.

It Is Further Stipulated that the above documentary evidence may be referred to by the parties in the briefs and upon the argument in this Court, with the same force and effect as if the same had been printed in full in said Case on Appeal.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendants-Appellants.

These exhibits are to be filed on or before the Wednesday preceding the first day of the term for which the appeal is noticed for argument.

So Ordered
B. B.

[fol. 347]

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

STIPULATION AND ORDER RELATING TO EXHIBITS—
November 28, 1962

It Is Hereby Stipulated that, subject to the Court's approval, the printing of the following exhibit introduced and admitted into evidence at the trial of this action and constituting a part of the case on appeal herein be dispensed with and that the original thereof be submitted to this Court prior to the argument, viz:

Plaintiffs' Exhibit 12—The Permabook edition of the novel "The Desperate Hours."

It Is Further Stipulated that the above exhibit may be referred to by the parties in the briefs and upon the

argument in this Court, with the same force and effect as if the same had been printed in full in said Case on Appeal.

This stipulation is supplementary to the Stipulation Relating to Exhibits herein dated September 30, 1962, and so ordered by Mr. Justice Botein.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendants-Appellants.

This Exhibit is to be filed on or before the Wednesday preceding the first day of the term for which appeal is noticed for argument.

So Ordered
B. B.

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PAGE

WITH THE FOREMOST WORLD WIDE NEWS SERVICES—ASSOCIATED PRESS, INTERNATIONAL NEWS, UNITED PRESS

WEATHER

Warm today; fair tonight. Continued warm tomorrow. Sun rose 6:18; sets 7:13. Temp. 7 A. M. 61; 1 P. M. 81

The Times Herald

Montgomery County's Great Home Newspaper

FINAL

An American Newspaper Since 1799

FOUNDED [illegible] 59th Year No. 15 NORRISTOWN, PENNSYLVANIA, FRIDAY, SEPTEMBER 12, 1952 PRICE FIVE CENTS

FAMILY HELD CAPTIVE BY FUGITIVES

Seven Whitemarsh Persons Terrorized 19 Hours By Trio

Escaped Federal Convicts Flee In Family Car After Holding James J. Hill Family Captive From 8 A. M. Thursday To 3:30 This Morning

Three men identified positively as the escaped convicts from the Federal penitentiary at Lewisburg held a Whitemarsh Twp. family captive at gunpoint for more than 19 hours—from 8 A. M. yesterday morning until 3:30 this morning—and then left, taking the family car.

Pardon Me

Convicts Polite To Captive Family

Desperadoes Cooperative And Offer to Aid Couple And Five Children

Whitemarsh Residence Used As Haven by Convicts

MEETING TONIGHT FOR FIBRE WORKERS

Court Frees State Officer Indicted for Embezzlement

Judge States Troubled Conscience More Punishment Than Imprisonment as He Imposes Suspended Sentence on William A. Mackin

TAFT PLEDGES EISENHOWER FULL SUPPORT

Senator and Nominee Have Breakfast Confab in Latter's Home

Truck, Station Wagon Crash Early Today on Ridge Pike

William O'Toole, Pottstown R. D. 3, Injured in Lower Providence; Norristown Girl Hit by Car

Y.M.C.A. AID DIES SUDDENLY

New Lutheran Church Planned For King of Prussia District

Conference Awaits Endorsement From Missions Board Sumneytown Pastor Heads County Group

BURNS FATAL TO PAINTER, 42

FAKE SOLICITORS GIVEN JAIL TERMS

Main Street

RED CROSS TO HOLD MEETING ON SEPT. 15

FLOWER, HOBBY SHOW PLANNED FOR PUPILS

FORMER EMPLOYES ROB MAN OF $1,000

Protest Settlement Offers Made for Swedesburg Homes

In Today's Times Herald

31,809 REGISTERED IN VOTER CAMPAIGN

Firestone Asks Injunction To Halt 'Illegal Picketing'

In Brief Today

PLAINTIFFS' EXHIBIT 1

[101 360]

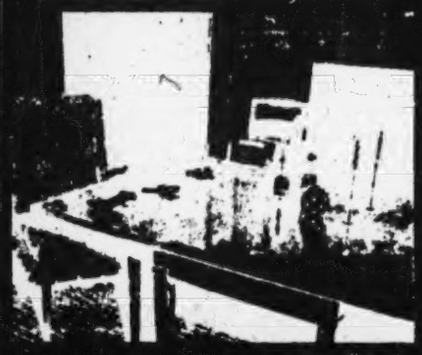
Downward Way Resumed In Stock Market Today

Losses Are Fairly General With Volume Over a Million

Police Ride Range In Quest of Steers

17 Escape from Rowe Property at Broad Axe This Morning

Table Where Convicts Played Cards



State Police Questioning James J. Hill

James J. Hill ... the three escaped convicts from ... spent 19 hours yesterday and today ... by a State policeman. Mr. Hill ... quiet and cooperative and for the ... The men stole a ... and took some of his clothes which they ...

Family of 7 Held Captive For 19 Hours by Fugitives

Continued from Page ...

... upstairs but no one was molested.

Two of the men left after noon and the third remained with the family. The woman answered the phone several times during the day and once answered a knock on the door. The man listened in on phone conversations from an extension phone in the house.

Later in the afternoon the fugitives returned to the area ... drive. They too were told ... quiet and they would not be ...

Later Mr. Hill, a maintenance ... House, Lafayette ... and a ... and ... armed.

The two convicts returned to the ... at 5:30 p.m. and ... The desperate convicts told the family they would ... and if they thought they could ... deep.

The family took mattresses from other beds and put them in one bedroom. The boys slept on the mattresses and the girls and Mrs. Hill in the bed. Mr. Hill slept in a chair.

A few minutes after ... Mr. Hill said he had ... Mrs. Hill ... Mr. Hill ... Mrs. Hill ... Mr. Hill ... Mrs. Hill ... Mr. Hill

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PAGE

[fol. 350]

PLAINTIFFS' EXHIBIT 2

From "Time" Magazine, September 22, 1952

HOUSE PARTY

When Mrs. Elizabeth Hill, 43, answered the knock at the back door one morning last week and saw the young man with a two days' growth of beard, she was terrified. Her husband, James Hill, a hosiery-company executive, had left for work; her daughters Betsy and Susan were in school. In the big, ivy-covered house in a Philadelphia suburb, there were only Mrs. Hill, her eleven-year-old son Jimmy and four-year-old twins, Clyde and Robert. On the 8 a.m. newscast she had heard about the three "desperate and vicious" bank robbers who had escaped from the federal penitentiary at Lewisburg.

"You probably know who we are," said 26-year-old Joseph Nolen of Woodbine, Ky. "We're not going to hurt you—we just want your house for a day. If you do what we tell you, nobody will be hurt." As Nolen pushed open the back door, his brother Ballard, 22, and Elmer Schuer, 21, of Chicago appeared from behind a trellis, pointing shotguns at Mrs. Hill. When the men had searched the house from cellar to attic, Mrs. Hill asked them if they would like some breakfast. "Yes, we'd appreciate it," replied Joseph politely. She fixed them some scrambled eggs, bacon and coffee.

Tonic & Lotion. Breakfast done, the three fugitives took baths and shaved, helping themselves to Hill's hair tonic and shaving lotion. Then they helped themselves to Hill's [fol. 351] suits. When Joseph discovered that six-footer Hill's suits didn't fit, he sat down at an old treadle sewing machine and carefully altered the trousers and sleeves. The

thread broke repeatedly, and Mrs. Hill kept rethreading the needle.

While one of the men stood by with a shotgun, Mrs. Hill called her cleaning woman to tell her that the car had broken down and she couldn't pick her up. A Fuller brush salesman telephoned, and she asked him to deliver the brushes she had ordered some other day. At 4 p.m., when Susan and Betsy came home from school and found Ballard guarding their mother (the other two had gone out somewhere on an errand), they thought it was some kind of joke.

Two hours later Hill came home from work, and Ballard ushered the whole family into the kitchen for dinner. They were all seated at a meal of canned soup, spaghetti, chili con carne, milk and coffee when Joseph and Schuer returned. "May I come in?" asked Joseph politely, standing in the kitchen doorway. Later the men played poker. They asked Betsy to join them, but she said that she played only canasta. The robbers told her they didn't know that game. Most of the time they kept the radio tuned to dance music, and they used no profanity.

Bedtime. "I guess you folks would like to go to bed," suggested Joseph at last. "If you do, just go ahead. I wish you would all go up to the third floor if you do go to bed." Hill observed that there was only one bed up there. So Joseph and the other two men carried up several loads of [fol. 352] cribs and mattresses. Hill sat up all night in a chair while his family tried to sleep. At 3:30 a.m., 19 hours after the fugitives entered the house, he heard his car start up. The three men then drove away into the early morning blackness, where the FBI and most of the police in Pennsylvania hunted for them.

Following out orders from the trio, who had cut the telephone wires, Hill waited until 8 a.m. before going to a neighbor's house to call the police to tell them about his interesting house guests.

Captive Family Moving to Conn.

Hills, Held by Convicts, Leaving Whitemarsh

[illegible] are leaving the [illegible] Whitemarsh Township where they were held captive for 10 hours last September by the Nolen brothers and Elmer Scheur, three escaped bank robbers.

[illegible] for the bakery firm executive, his wife, Elizabeth, and their five children.

They are moving to their new home in Old Greenwich, Conn., two blocks from Long Island Sound where the entire family will be close to their favorite recreation—salt water bathing.

The terrifying experience of last September 11-12 is not forgotten but seldom discussed, and never with the children. It has had nothing to do with their moving.

Office to Move

Hill is general sales manager of the Dunhill Hosiery Co., Lansdale, which is transferring its main sales offices to New York City. He will make his headquarters there. Old Greenwich is 45 minutes away.

The family now travels in a new 1952 Pontiac sedan. The three desperadoes drove away from the Hill home on the morning of September 12 in the family's yellow-green Pontiac, now impounded by New York police.

They were using the car when cornered by police early on the morning of September 21 in a Harlem apartment. In a fierce five-minute gun battle the Nolen brothers—Bullard and Joseph — and a New York detective, Philip La Monica, were shot to death.

Scheuer, who was captured uninjured, pleaded guilty last week to robbery and kidnapping charges in a Bronx Court. He also faces a charge of homicide.

Not Harmed

The Hills were not harmed by the three desperadoes who chose

Mrs. James J. Hill

the family's home because of its [illegible]luded location atop a knoll some [illegible] yards from Joshua road.

Mrs. Hill was having breakfast with James, 11, and the couple's four-year-old twins, Clyde and Robert, when the Nolens and Scheur, armed with rifles, arrived.

The couple's two daughters, Susan, 17, and Betsy, 15, joined the captive family when they returned in the afternoon from Norristown High School. When Hill arrived home from the office later in the day, he too was held captive.

The three convicts, who had escaped the previous day from Lewisburg Penitentiary, allowed the family to have their meals throughout the day. In the evening the Hills grouped upstairs.

Took Clothing

Meanwhile the Nolens and Scheuer ate well of the Hills' food, luxuriated in hot baths and fresh shaves and helped themselves to some of Hill's expensive wardrobe.

They drove off early on the 12th after taking $14.98 from Hill and warning the family not to notify police until 8 A. M., several hours later.

Mrs. Hill said yesterday that the family has suffered no ill effects from the experience.

Moving is nothing new to the family. They have moved almost yearly in the last ten years as Hill was transferred from place to place by Dunhill.

"Moving a family our size from a 20-room house is some job," Mrs. Hill said as she supervised the packaging of the chinaware.

"It seems that what we pack the twins unpack."

[fol. 353]

PLAINTIFFS' EXHIBIT 5A

325

[fol. 354]

PLAINTIFFS' EXHIBIT 6

From "The Philadelphia Inquirer" of February 21, 1954:

CONVICTS HIDE IN HOME, HOLD FAMILY AS HOSTAGES

THE DESPERATE HOUR. *By Joseph Hayes.* (*Random House. 302 pp. $3.50*)

By Frederic G. Hyde

In this tense, compactly built tale of terror, Philadelphia readers will recognize a slice of real life out of the fairly recent past. Joseph Hayes has simply drawn to its logical conclusion, in a single time sequence, what might have happened when three escaped convicts took over the home of a well-known Whitemarsh physician as a hideout and held members of the family hostages for a considerable length of time before moving on.

The author has transferred his locale to the outskirts of Indianapolis; his convicts are from Terre Haute instead of Bellefonte, and he has peopled the house of the captives to suit his own purposes. Beyond that, with compelling detail and deft characterization, he has played out the story that could have developed in Whitemarsh if circumstances had brought the police into it in time.

"The Desperate Hours" has terrific emotional impact, playing as it does on the fears and divided loyalties of the trapped father, Dan Hilliard; the disillusionment of his small son Ralph and the latter's ultimate recovery of faith [fol. 355] in his dad's knowledge and strength, and the courage-close-to-tears of Hilliard's wife and daughter.

Hayes has made his convicts, too, actual human beings rather than figures of stock. They are hardly admirable, but one knows how they feel and why, without being subjected to case histories.

This is the first full-length novel by a short-story writer who already has made a name for himself in the magazine and television fields. Many a veteran novelist could envy him his skill.

[fol. 356]

PLAINTIFFS' EXHIBIT 7

New York (Sunday) Times
February 28, 1954

NIGHTMARE AT THE HILLIARDS'

THE DESPERATE HOURS. By Joseph Hayes. 302 pp. New York: Random House, $3.50

By C. V. TERRY

Billed as a novel of suspense, this book earns its title from the first breathless paragraph. The story-line is a familiar one (what happens when a trio of mad-dog convicts hole up in an average home after a jail break). So, inevitably, are most plot patterns in novel of this genre: it is the treatment, not the ingredients, that really matters. Mr. Hayes has milked the last drop of horror from his macabre situation. As a Hitchcock-type nightmare, "The Desperate Hours" is a strictly Grade-A job.

As we have said, the story hits its stride on the first page, when the three escaped hoodlums ghost out of a woodlot (like lonesome jackals on the prowl), capture a farmer's car and go roaring south to Indianapolis, to make rendezvous with a lady who'll bring funds to complete their getaway. The pace never slackens as the trio enters the suburban home of the Hilliards (a house selected at random, thanks to its comparative isolation). Eleanor Hilliard is pinned down to her living room, just as she is finishing her afternoon's housekeeping. So is 11-year-old

Ralphie, as he comes rollicking in after school. So are 19-year-old Cindy and Dan Hilliard, as they return from their [fol. 357] respective jobs—and the nightmare is smoothly in gear.

What happens thereafter is Mr. Hayes' story. Other characters move into the fringes of the main action as the novel goes careening toward its fearful finale—Cindy's playboy-fiancé (who turns out to be anything but that in the closing chapters), a demon-ridden sheriff whose resemblance to TV's Joe Friday is, after all, only coincidental. The author draws each member of his hard-pressed cast with a sharp, true pen. When you have turned the last page, you'll find the Hilliards are as convincing (and as cohesive) as the family next door. So, for that matter, are the convicts themselves. These are completely evil men, doomed and damned almost from birth. Yet they are completely human too, from first to last. This, perhaps, is the book's most ominous social comment.

This is Mr. Hayes' first novel. A publisher's note informs us that he learned his trade via the television studio and the slick short-story mill. Some of that slickness is in evidence here and there. Some of the drama is a bit contrived, and the ending, for all its biblical inevitability, seems designed for the camera's eye rather than the reading lamp. But these are minor points in a novel of nerve-shattering impact. "The Desperate Hours" (a Literary Guild choice for March) is a whale of a good yarn. But don't begin it after midnight, unless you have company.

Mr. Terry comments frequently on modern fiction.

[fol. 358]

New York Herald Tribune
February 28, 1954

FANTASTIC BUT TIMELY TERROR

THE DESPERATE HOURS.

By Joseph Hayes. *302 pp. New York:*

Random House. $3.50.

MR. HAYES' novel of suspense is a story which could appear in any daily newspaper, but the sort of thing one never believes can happen to oneself. He has dramatized it by setting it in the midst of a typical middle-class American family, to bring it more closely home to the reader.

When Glenn Griffin, his brother Hank, and a lifer by the name of Robish, escaped from the Federal prison at Terre Haute they followed a carefully worked out plan of Glenn's. They were to hide out in a home selected at random, with the family to be held as hostages, until Glenn's girl friend had a chance to join them with the stolen money he had cached. Their destination was Glenn's home town, Indianapolis, partly because he was familiar with it, and partly because he wanted revenge on Jesse Webb, the sheriff's deputy who had captured him and broken his jaw.

The family Griffin selected was the Hilliard family—father, mother, nineteen-year-old daughter, and ten-year-old son. The convicts moved in on them and held them in a siege of terror—so complete that the father and daughter went out to do errands for them, powerless to appeal to [fol. 359] the police for fear there would be reprisals on the mother or son. Moreover, Griffin let them know that some of the family would go with him when he left—to insure that the police could not lay a trap for them on the way out. The family was helpless.

Meanwhile, Jesse Webb, the police and the F. B. I. were narrowing the circle down to the hideout. But they, too,

had become aware of the hostages' dilemma, and it hampered them in their efforts to move in on the desperate convicts.

Mr. Hayes has possibly over-extended his story a bit, and its suspense wears a little thin in patches. But it is a well-contrived yarn, and has the vividness of timeliness.

[fol. 360]

New York Times
March 3, 1954

BOOKS OF THE TIMES

By Orville Prescott

Suspense once meant a condition of anxious uncertainty. As a descriptive label on book jackets during the last few years the word has lost much of its original meaning. It is used indiscriminately to describe any novel that has a melodramatic central situation and thus covers spy stories, gangster stories, stories about smuggling, mad scientists and stolen jewels, and even detective stories. Nowadays when a prospective reader considers a suspense story he is anxious lest he waste his time and money and is uncertain what sub-classification of suspense awaits him. Will it be hide and seek around the Iron Curtain or vengeance among the syndicate chieftains? In view of this confusion the publishers have probably injured rather than helped Joseph Hayes' "The Desperate Hours" * by calling it "a novel of suspense."

"The Desperate Hours" is too good a novel for such labeling. It happens that its central situation is as cruelly melodramatic as any in modern fiction and the suspense it generates, the anxious uncertainty, is tremendous. But this is not just a tale of violence and terror. It is an expert study

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* *THE DESPERATE HOURS. By Joseph Hayes.* 302 *pages. Random House.* $3.50.

of the agonizing dilemma of a group of sharply delineated and deeply understood characters. The people involved in Mr. Hayes' frightful predicament matter. They aren't just [fol. 361] good guys and bad guys. They have tired bodies and shocked minds and genuine emotions. And they are capable of suffering because of their love for others.

A Time for Caution

Eleanor Hilliard was alone when the three escaped convicts forced their way in. Two were young and handsome, obviously brothers. One was older, massive, ugly and sullen. All three were jittery with excitement and an almost hysterical nervousness, which was even more frightening than their revolver or their threats. All they wanted was a safe place to hide until their money came, the elder brother explained. Just do what you're told and no one need be hurt. Ten-year-old Ralphie was the first to come home, then Cindy from her secretary's job, and then Dan.

Dan Hilliard was an intelligent and a brave man. But what could he do? He could see that Glenn Griffin, the elder brother and leader of the three, was a killer. Clever, cruel, swaggering arrogantly to cover his inner insecurity, Glenn left no doubt that he meant it when he said that if trouble came he woud shoot Dan's wife or children first. The older man—Robish, they called him—seemed even more dangerous, much less intelligent, much quicker to kill. Hank Griffin, the younger brother, might have had a stray decent instinct, but he was obviously dominated by Glenn.

Two Days of Mounting Tension

Every hour of the next two nights and days seemed worse than the one before. Mr. Hayes tells what happened [fol. 362] from moment to moment with a narrative pace that leaves one almost breathless, with great ingenuity in elaborating complications and unexpected developments and with deft skill in switching his attention from the Hilliard family, to the police in a frenzy of frustration

trying to locate the missing convicts, to the convicts themselves. "If the police came, it might be tragic," thought Dan; that's when the shooting would start. "If they did not come it might be worse." Cindy was beautiful, with a redhead's unpredictable temper, and she might do something reckless. Ralphie couldn't be made to understand the situation. It was all cops and robbers to him and he expected his father to do something heroic at once, never grasping that a false move might mean his own death, or his sister's or his mother's.

Dan Hilliard lost his temper once and nearly brought on the disaster he feared. After that he felt horribly helpless because of his fear for those he loved. He must do something, but what could he do? "Afterward, after the tragedy, if tragedy came, a man could be haunted forever, if still unmercifully alive, with the cutting realization that he might have, by some sly or bold cleverness at just the right moment, prevented it all." But Dan didn't dare call the police when he had the opportunity. Supposing that cynical, sadistic, semi-hysterical young killer suspected what he had done? It wasn't his own life he was gambling with.

No hint will be given here about the ultimate fate of the four Hilliards and their three menacing visitors in the [fol. 363] pleasant house just outside Indianapolis. Mr. Hayes has written his story with remorseless logic, heightening his suspense to an amazing tension, always keeping within the boundaries of reasonable probabilities considering the nature of the people involved. His central situation is an old one and has been used many times before in novels, plays and movies. But Mr. Hayes has developed it with fresh and original ideas of his own. His primary concern, of course, is excitement. But the reason "The Desperate Hours" is many times more exciting than most suspense stories is that it is psychologically convincing and gruesomely frightening. What happened to the Hilliards might by an unlucky chance happen to any of us.

Joseph Hayes has written many short stories and television plays, but "The Desperate Hours" is his first novel. It is a dandy.

[fol. 364]

New York Herald Tribune
March 4, 1954

BOOK REVIEW By Lewis Gannett

THE DESPERATE HOURS. *By Joseph Hayes. Random House. 302 pages. $3.50.*

From his hilltop in Bridgewater, Conn., Joseph Hayes can see at night the circle of lights that marks Danbury Federal prison. And when he has just read in the newspapers of a convict who escaped from prison, broke into some lonely homestead and forced the family to do his bidding as hostages, he looks at those bright lights, and at his red-haired wife and red-haired sons, and wonders, "What if there were a prison break, and one or more of those desperate men escaped in this direction?"

What Would You Do If . . .

His wondering led him to spin the high-tension story that is the Literary Guild's March selection. If you start reading "The Desperate Hours," it's a fair bet that you will gallop on, sleepless, to the end. And wonder, as you read, what you would have done if it had happened to you.

"We'll find us a cozy spot," the leader of the three convicts had said. "A nice quiet house on a nice quiet street on the edge of town, with no other houses close by. Comfortable, scared people—a sucker who goes to work every [fol. 365] day, maybe a kid in the family." The Hilliard house on Kessler Boulevard looked right to him, and it proved right. Glenn Griffin stepped inside when Eleanor Hilliard opened the front door at 2:30 p.m. Old Robish

had come in the back door without Eleanor knowing it, young Hank Griffin with him. And Hank soundlessly cased the upstairs rooms while Glenn was saying to Eleanor, "Take it easy, lady. You open your mouth, the little kid who owns the bike out front'll come home from school and find your body.... We're playing for keeps."

"What do you want me to do?" Eleanor asked. There wasn't much else she could do, then, or when ten-year-old Ralphie came home, or later when nineteen-year-old Cindy, redheaded and spitfire, burst into the house.

Glenn Griffin was in charge. "Sit down, redhead," he said to Cindy, "and let me explain the facts of life. With that hair, you might feel like getting brave. You might even get away with it, not get hurt at all. That's not saying what will happen to the old lady, or the kid brother, or the father." Cindy sat down.

When Dan Hilliard came home, and faced Glenn Griffin's gun, he, too, said, "What do you want?" He had heard the broadcast about the three escaped convicts; he knew who they were; he knew the police were hunting for them; he was trying to figure it out.

Meanwhile Deputy Sheriff Jesse Webb was trying to figure it out, too. He knew the men; he knew the name, but not the address, of Glenn Griffin's girl friend; he knew that [fol. 366] Glenn had a particular grudge against him, Jesse Webb. He knew that Glenn wouldn't hesitate at a few more killings along the way. "I don't know what makes people go bad," he said. "I grew up in a neighborhood that was worse than the Griffin boys' if it comes to that. But..."

Perhaps that is as much as it is fair to tell of Mr. Hayes' scenario. We might also introduce Chuck Wright, Cindy's boy friend, who smells a rat when Cindy, ordered to go out with him as usual, doesn't behave as usual. But Chuck Wright, though he plays a major part in the denouement, isn't really essential to Mr. Hayes' story. Chuck is just another man, mad clear through and tempted to be overbrave, who faces a question of moral responsibility under circumstances for which he isn't prepared.

Spotlight of Suspense

Mr. Hayes' spotlight swings backward and forward, focusing now on the convicts, now on one or another member of the Hilliard family—even on little Ralphie, who wanted to be brave, too, and now on the police, slowly but surely closing in on their quarry but not so sure how to face three desperate men holding four innocent hostages. Mr. Hayes makes the most of the uncertainties in all his characters' minds, and the reader is not sure what the outcome will be until he is within ten pages of the end.

"The Desperate Hours" is, I suppose, what the publishers like to call a "novel of suspense." It isn't a "mystery" because the reader is never in doubt who are the guilty [fol. 367] ones and who the innocent—merely how any of them will react to the constantly shifting pressures of their desperate hours. I am ordinarily one who reacts with apathy to suspense-packed crime stories. But I found this one convincing and spellbinding. I began it, intending to read myself to sleep with a few pages. I sat up in bed, reading fiercely, until I came to the end.

[fol. 368]

PLAINTIFFS' EXHIBIT 8

Hickory 6-2844

Frank Rasky 37-09 75th Street
Jackson Heights 72, Long Island

April 28, 1954

James J. Hill,
Lansdale, Pa.

Dear Mr. Hill:

Allow me to introduce myself. I am a professional magazine writer in New York.

The editor of *Male Magazine* has asked me to inquire whether you would be prepared to submit to an interview in connection with your experience in September, 1952.

That, of course, is when your family were held by those escaped convicts for 19 hours.

Under such an arrangement, you would receive half of any payment I would get from the magazine.

I believe such an article would help the public to understand how to contend with criminals.

I would be much obliged if you would write telling me whether or not you would be interested in such an article being written about your experience. If you are interested, I would like to arrange a satisfactory time when I can come to your place for an interview.

Cordially,

FRANK RASKY

[fol. 369]

COPY

May 1, 1954

Dear Mr. Rasky—
Jackson Heights, L. I.

Dear Mr. Rasky—

Your letter of April 28th received.

For the best interests of our children we have felt that it was best to avoid any course of action that might remind them of our experience in September 1952.

Following this policy we have refused all radio, television, magazine, newspaper, etc. offers connected with that experience.

Trusting that you will understand and abide by our feelings on this matter I am

Sincerely yours,

JAMES J. HILL

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PAGE

Program — Page 75 closes Friday

14 X 64 5

In 1952 a young Indianapolis author, Joseph Hayes, read a hair-raising report (above) of a suburban Philadelphia family, held prisoner in their own home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play, [redacted]. While it was being filmed, a New York producer persuaded Hayes to turn his novel also into a Broadway play. The movie producers [redacted] agreed not to release the film for a year [redacted], in order to give the play a chance to pay off. Now that The Desperate Hours is a Broadway [redacted] hit, and two more companies are rushing into production [redacted], Hayes stands to make a half million dollars on this Philadelphia horror story.

Directed for Broadway by Robert Montgomery, and expertly acted, Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis. LIFE photographed the play at its Philadelphia try-out, and transported some of the actors to the actual house where the family, who no longer live there, were besieged. On the next page [redacted] scenes from the play are reenacted [redacted] on the original site of the crime.

[fol. 370] PLAINTIFFS' EXHIBIT 20 337

Page 76 Uncut Ends

Mcleary-Fahey

~~Desperate Hours~~ CONT.

36 THREE CRISES AT A BACKDOOR

2171 3 AT REAL HOUSE where family was trapped, actors do scenes from play.

Here daughter Cindy stalls off beau from entering her beleaguered home

2252 4 BRAVE FATHER ejects convicts from [redacted] house, but has to toss out gun and

let them in [redacted] because they hold his [redacted] son as a hostage.

[fol. 371]

2270 5 RESCUE comes in the form of a trash-collector, who chats with wife and

suspects something is wrong. He gets killed, but gives clue to police.

338

4 C-O-N-P

[fol. 372]

Prudeaux - Echey P.78 Closed Friday

1 ~~Desperate Hours~~ CONTINUED

4X52 2 MOST BRUTISH of ~~the~~ three convicts is Robish (George Matthews) who roughs up the son, Ralphie (Malcolm Brodrick), tells him to remember ~~him~~ that ~~the~~ the big boss is another convict, Glenn, who keeps gun pointed at family.

2X52 3 DARING DAUGHTER ~~(illegible)~~ (Patricia Pearden) bites hand of young cut convict(George Grizzard), forces him to drop gun.

2X52 4 FEVERISH ~~PARENTAL~~ FATHER (Karl Maulden, right) fires off unloaded gun on leader (Paul Newman), saves son and family.

[fol 373]

Rudesby - Echo Page 75 Clouds Fix

1 THEATER

ACTUAL EVENT

4x6 1 2 1952, as reported in newspaper above, took place

in isolated House 10 miles outside Philadelphia, where three

penitentiary

convicts from KOMING [redacted], held family of James Hill as prisoners,

until they could obtain money. All three convicts were caught later.

3 - 5 attchd

4x6 1 6 STAGE SETTING for play is cross section of the be-

seiged house. Two convicts in living room harangue with the daughter,

while the mother (Nancy Coleman) watches helplessly. In bedroom (above,

right), father tries to comfort son and in upstairs hallway

listens in on phone calls.

a third convict [redacted]

p. 75 [fol. 374]

25½ 3 TRUE TENSE PLAY
CRIME INSPIRES

90 4 Case of family trapped by convicts moves author to write novel, mpvie and now a Broadway thriller.

5 text attached

7 C—O—N—P

14x9 5 In 1950 a young Indianapolis author, Joseph Hayes, read a hair-raising report (there) of a suburban Philadelphia family held pris-

oner in their own home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel also into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to pay off. Now that Desperate Hours is a Broadway hit, and two more companies are rushing into production, Hayes stands to make a half million dollars on his Philadelphia horror story.

The film directed by Robert Montgomery, and expertly acted, Hayes' play is a ~~magnificent fiction~~ but heart-stopping account of how the Hilliard family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia try-out, and transported some of the actors to the actual house where the ~~family~~ Hilliards, who no longer lives there, were besieged. On the next page scenes from the play are reenacted on the original site of the crime.

[fol. 375] PLAINTIFFS' EXHIBIT 21 342

1 KOMIKO CONTINUED

26 2 THREE CRISES AT BACK DOOR

2x70 3 AT REAL HOUSE where family was trapped, actors do scenes from play. Here daughter Cindy stalls off beau from entering her beleaguered home.

2x52 4 ejects convicts from house, but has to toss out gun because they hold his son as hostage.

2x70 5 comes in the form of trash collector, chats with wife and suspects something is wrong. He gets killed, but police

6 CONTINUED ON NEXT PAGE

[fol. 376]

1 CONTINUED

4x52 2 BRUTISH convicts is MOUTH (George Matthews) roughs up the son, Ralphia (Malcolm Brodrick), tells him to remember that the big boss is another convict, keeps gun pointed at family.

(Grizzard)

on hand to terrorize family

2x52 3 DARING DAUGHTER (Patricia Pearden) bites hand of youngest convict (George Grizzard), forces him to drop gun.

2x52 4 FEVERISH FATHER foists off unloaded gun on leader (Paul Newman), saves son and family.

[fol. 377]

1 THEATER

Ecker

4x61 2 ACTUAL EVENT in 1952, as reported in newspaper ~~sheet~~, took place in isolated house 10 miles outside Philadelphia, where three convicts from KEMBLE penitentiary, held family of James Hill as prisoners, until they could obtain money. All three convicts were caught later.

25½ 3 THEE CRIME INSPIRES THREE PLAY

90 4 Cas of family trapped by convic[redacted]

a.[redacted]

[fol. 378]

5 text attached

4x61 6 STAGE SETTING for play is cross section of besieged house. Two convicts in livingroom harange with the daughter, while the mother (Nancy Coleman) watches helplessly. In bedroom (above, right), father tries to comfort son, as a third convict listens in on phone calls in upstairs hallway.

345

7 CONTINUED ON NEXT PAGE

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PAGE

Three years ago Americans all over the country read about the James Hill family outside Philadelphia, held prisoners in their own home by three escaped convicts. Later they read about it in a book, The Desperate Hours, by Joseph Hayes. Now they can see it reenacted in Hayes' Broadway play, and next year will see it in his movie, which has already been filmed but is being held up until the play has a chance to pay off.

Prideaux- p. 75 Color?

14x64 5 In 1952 a young Indianapolis author, Joseph Hayes, read a hair-raising report (above) of a suburban Philadelphia family, held prisoner in their own home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel also into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to pay off. Now that Desperate Hours is a Broadway hit, and two more companies are rushing into production, Hayes stands to make a half million dollars on his Philadelphia horror story.

Directed by Robert Montgomery, and expertly acted, Hayes's play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis. LIFE photographed the play at its Philadelphia try-out, and transported some of the actors to the actual house where the family, who no longer lives there, were besieged. On the next page scenes from the play are reenacted on the original site of the crime.

[fol. 380] PLAINTIFFS' EXHIBIT 22 347

Scher

1 CONTINUED

4x52 2 MOST MENACING of three convicts is Kobish (George Matthews) who roughs up the son, Ralphie (Malcolm Bredrick), tells him to remember that the big boss is another convict, Glenn, who keeps gun pointed at family.

2x52 3 DARING DAUGHTER (Patricia Pearden) bites hand of youngest convict (George Grizzard), forces him to drop gun.

2x52 4 FEVERISH FATHER (Earl Holden, right) feints off unloaded gun on leader (Paul Newman), saves son and family.

[fol. 381]

1 KOMING CONTINUED

26 2 THREE CRIMES AT BACK DOOR

2x70 3 AT REAL HOUSE where family was trapped, actors do scenes from play. Here daughter Cindy stalls off beau from entering her beleaguered home.

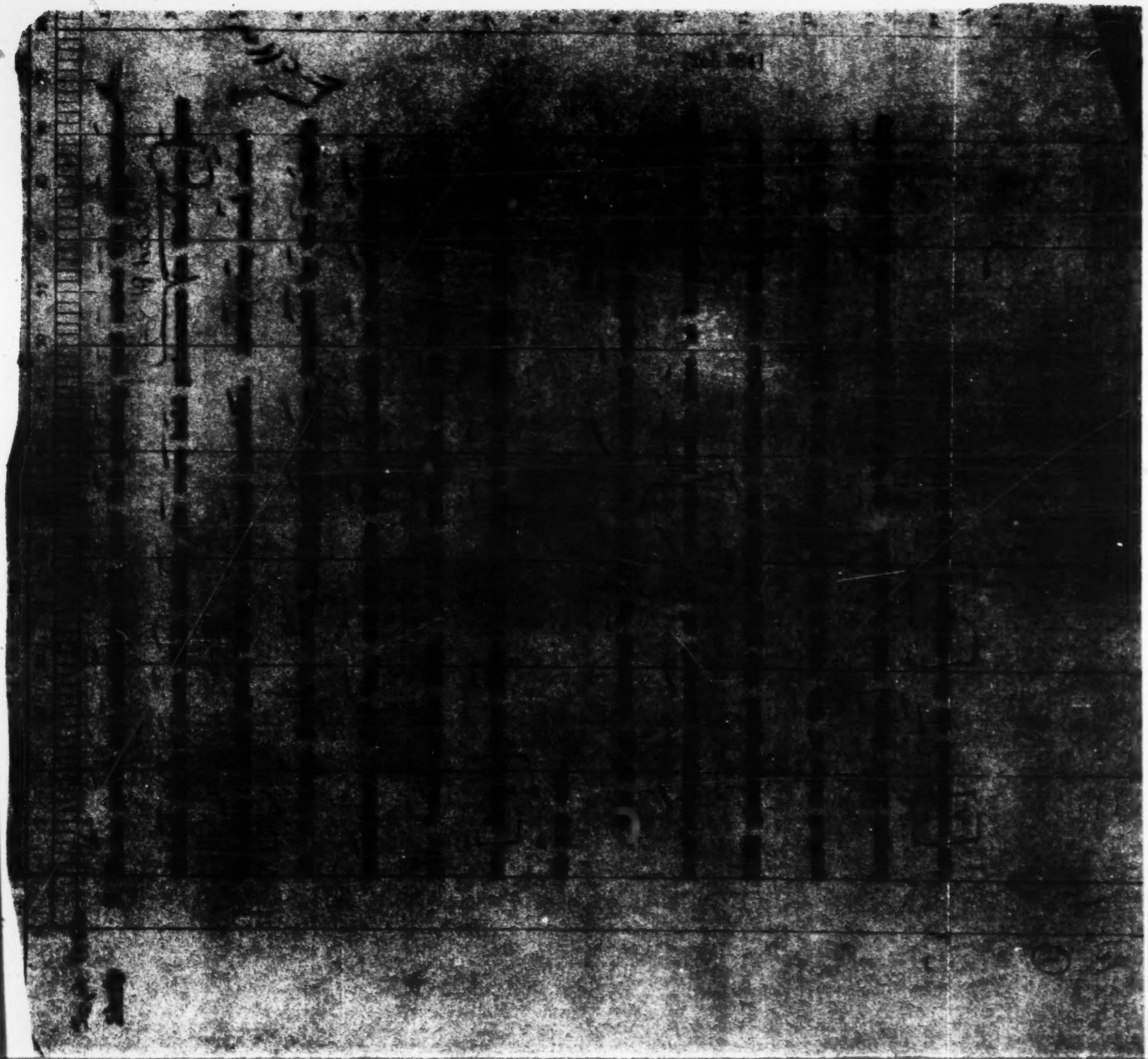
2x52 4 BRAVE FATHER ejects convicts from house, but has to toss out gun and let them in because they hold his son as hostage.

2x70 5 RESCUE comes in the form of a trash collector, who chats with wife and suspects something is wrong. He gets killed, but gives clue to police.

6 CONTINUED ON NEXT PAGE

[fol. 383]

PLAINTIFFS' EXHIBIT 22A



P. 75

2. True Crime [redacted]

2 [redacted]

3 [redacted] where finally [redacted] arrest [redacted] from [redacted]. Here [redacted] [redacted] from [redacted] her [redacted] home.

4 BOLD [redacted] to save [redacted] [redacted] [redacted] (Kail Maldon) [redacted] to [redacted] out gun because [redacted] his son is held as hostage.

5 FIRST MOVE for rescue comes when trash collecter [redacted] chats with wife and suspects something is wrong. He is killed, but death puts police on trail.

6 [redacted]

[fol. 385]

352

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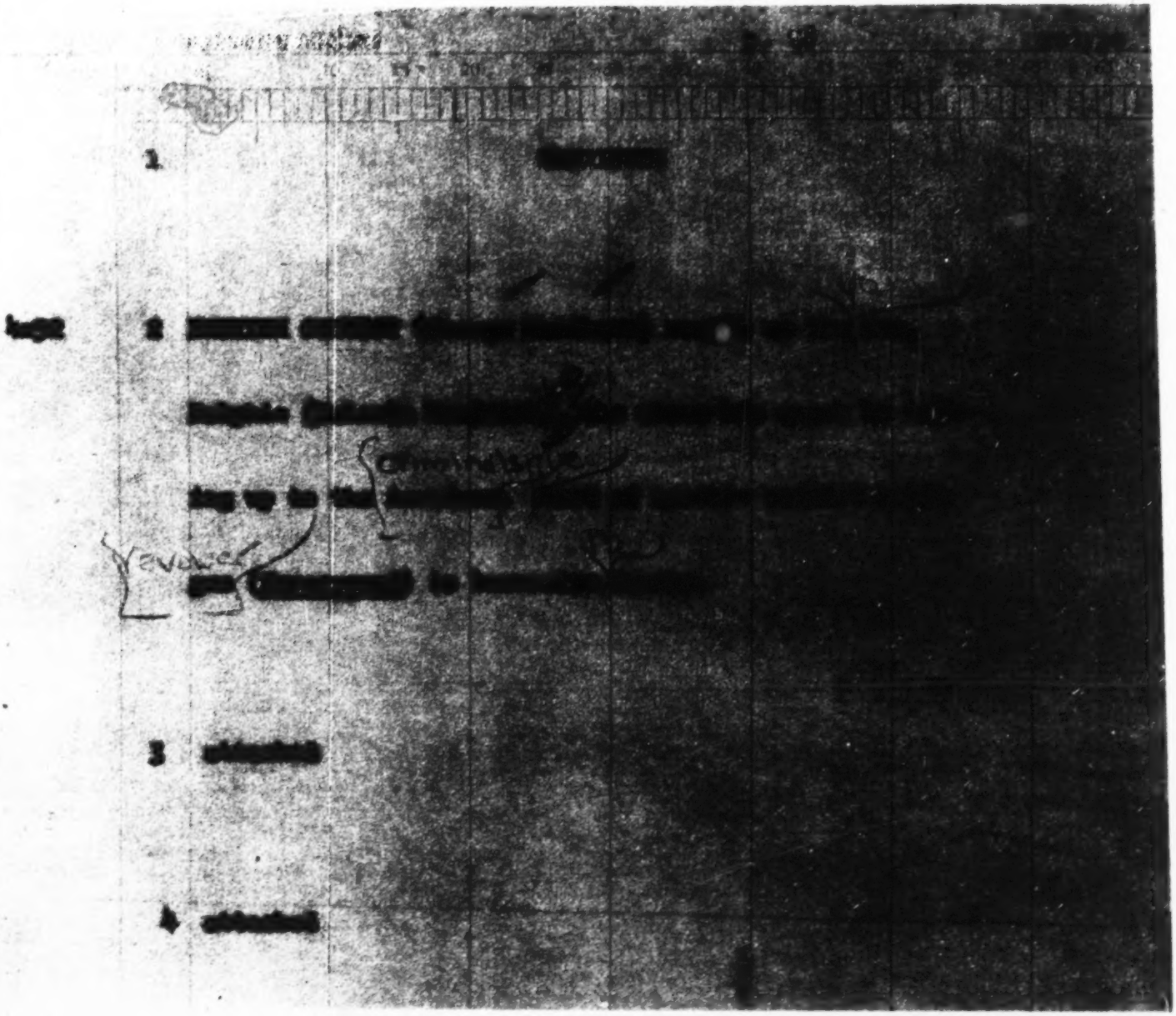
PAGE

2x52 4 BOLD ATTEMPT to save family fails when father (Karl Mal-

den) has to toss out gun because his son is held as hostage.

[fol. 387]

[fol. 388]



Prideaux

DO Lor R

(two) Three years ago Americans all over the country read about the desperate- for 19 hours
ordeal of the James Hill family who were held prisoners in their own home
outside Philadelphia by three escaped convicts. Later they read about
it in Joseph Hayes's novel The Desperate Hours inspired by the family's
experience. Now they can see the story reenacted in Hayes's Broadway
play based on the book, and next year will see it in his movie, which
has already been filmed but is being held up until the play has a chance
to pay off.

The play, directed by Robert Montgomery and expertly acted, is a
heart-stopping account of how an average family rose to heroism in a crisis.
LIFE photographed the play during its Philadelphia try-out, and trans-
ported some of the actors to the actual house where the Hills, who no
longer live there, were besieged. On the next page scenes from the play
are reenacted on the original site of the crime.

[fol. 389]

PLAINTIFF'S EXHIBIT 23
356

least grew

cr

1 THEATER

4n61 2 ACTUAL EVENT [in 1992,] as reported in newspaper above, took place in [isolated] house 10 miles outside Philadelphia, where three convicts from ~~XXXXX~~ penitentiary, held family of James Hill as prisoners, ~~while trying to obtain money~~. All three convicts were caught later. while they hid from manhunt. captured

2½ 3 THEM CRIME INSPIRES THEMX PLAY

90 4 ~~tms of family trapped by convicts moves author to write novel, movie and~~ a Broadway thriller. [fol. 390]

5 text attached

4n61 6 SCENE SETTING for play is cross section of besieged house. [Two convicts in livingroom ~~XXXXXXXXXXXXXXXXXXXX~~ daughter, while [the] mother (Nancy Coleman) watches helplessly. In bedroom [(above, right),] father tries to comfort son, as [a] third convict listens in on phone calls in upstairs hallway.

7 CONTINUED ON NEXT PAGE

357

1 CONTINUED

26 2 THREE CRIMES AT A BACKDOOR

2x70 3 AT REAL HOME where family was trapped, actors do scenes from play. Here daughter Cindy shells off beam from entering her beleaguered home.

2x52 4 [redacted] ATTEMPT to save family fails when father, having rejected ambulance from home, has to toss out gun because [redacted] of hostage.

2x70 5 FIRST HOPE for rescue comes when trash collector, chats with wife and suspects something is wrong. He is killed, but death puts police on trail.

6 CONTINUED ON NEXT PAGE

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PAGE

BRAVE TRY

TRY

2x52 4 BOLD ATTEMPT to save family fails when father (Karl Mal-

den) has to toss out gun because his son is held as hostage.

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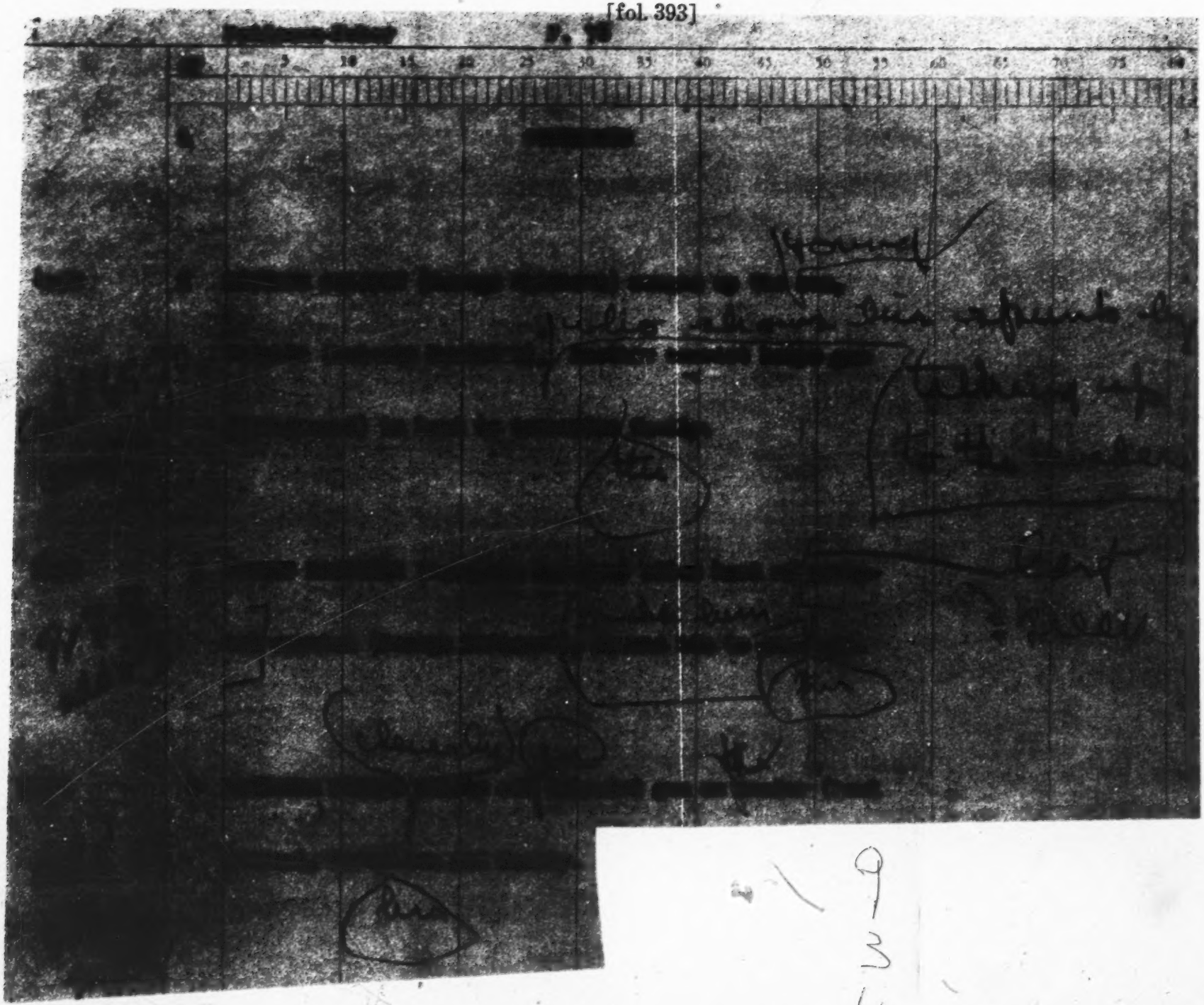
1 its

[392]

[fol. 393]



[fol. 394]

prisoners-other
oc

p. 78

retype

1 [redacted]

kept 2 [redacted] convict (George Matthews) roughs up the young son, Ralphie (Malcolm Broderick), who shows his spunk by talking up to the criminals. Hand of another convict holds a gun (firearm) to terrorize the family.

3 attached

4 attached

cr 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80

1 THEATER

4x61 2 ACTUAL EVENT in 1952, as reported in newspaper above, took place

about 10 miles from
in isolated house ~~10 miles outside~~ Philadelphia, where three con-

Lewisburg
victs from ~~county~~ penitentiary held family of James Hill as pri-

soners while they hid from manhunt. The All three convicts were

captured later.

EXHIBIT 8
E.G.

25½ 3 THEIR CRIME DEEPENS THEIR PLAY

ordeal of family trapped by convicts gives Broadway a new thriller, 'The

90 4 ~~ordeal of family trapped by convicts moves author to write novel, movie and now~~
~~desperate hours'~~

N. Y. SUPREME COURT
PLFS EXH 24
APR 1952
DEFTS EXH
A. STERN OFFICIAL STENO

5 text attached

4473

6 STAGE SETTING for play is cross section of besieged house. Two

convicts in living room hear[s] daughter while the mo-

ther (Nancy Coleman) watches helplessly. In bedroom above,

father tries to comfort son, as a third convict listens

in on radio talk in upstairs hallway.

PLAINTIFFS' EXHIBIT 24

[fol. 395]

362

22 [illegible]

add 1 pica
hot out C
insist
drop one line
across cap 5

Three years ago Americans all over the country read about the desperate ordeal of the James Hill family who were held prisoners (for 19 hours) in their own home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel The Desperate Hours inspired by the family's experience. Now they can see the story reenacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has already been filmed but is being held up until the play has a chance to pay off.

The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how an average family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, and transported some of the actors to the actual house where the Hills, who no longer live there, were besieged. On the next page scenes from the play are reenacted on the original site of the crime.

[fol. 396]

1 True Crime CONTINUED

26 2 THREE CRIMES AT A BACKDOOR

2x70 3 AT REAL HOUSE where family was trapped, actors do scenes from the play. Here daughter Cindy stalls off her beau from entering the beleaguered home.

2x52 4 DARING ATTEMPT to save family fails when father, having ejected convicts from house, has to toss out gun because they hold his son as hostage.

2x70 5 FIRST HOPE for rescue comes when the trash collector senses something is wrong. He is killed, but his death puts police on trail.

6 CONTINUED ON NEXT PAGE 78

[fol. 397]

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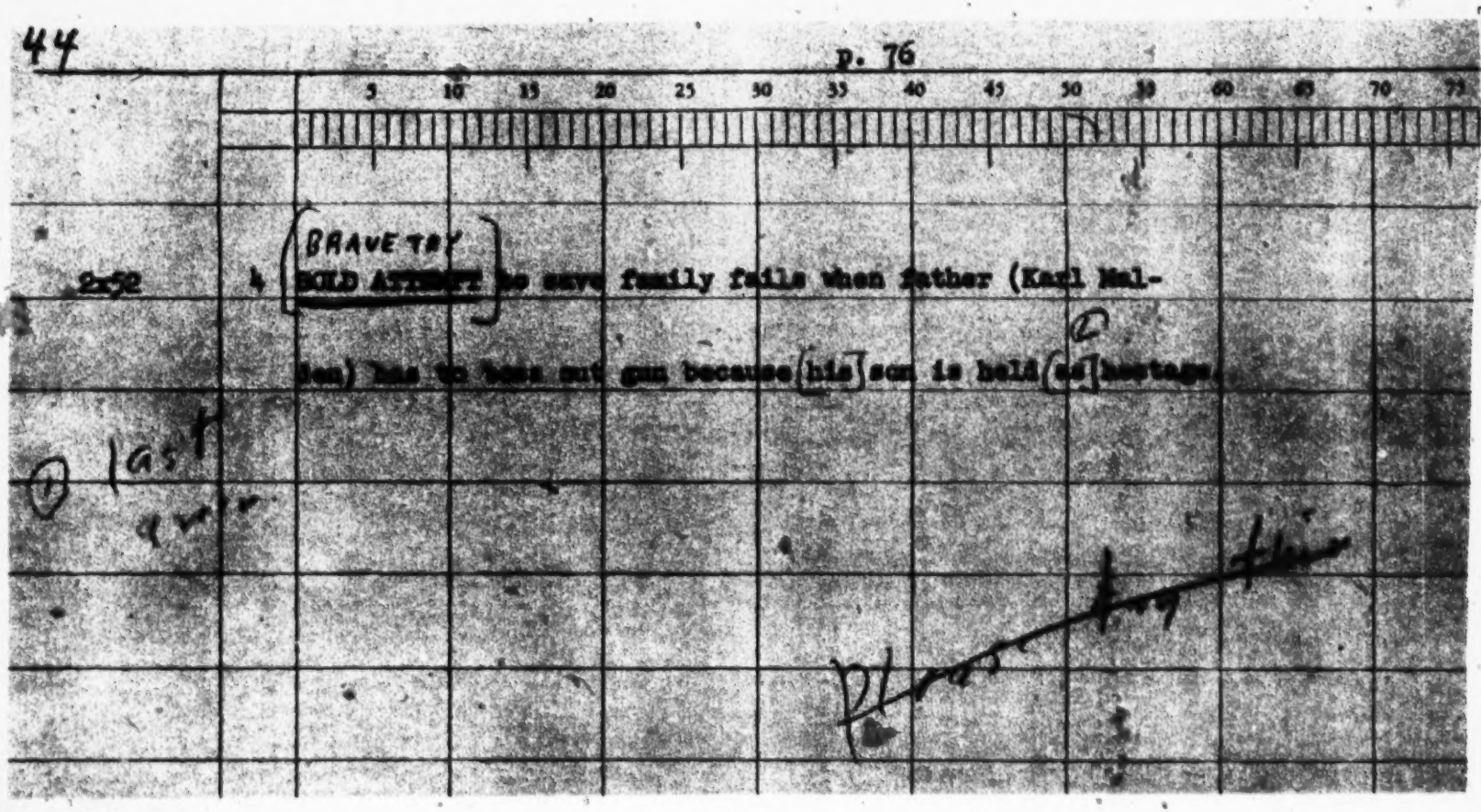
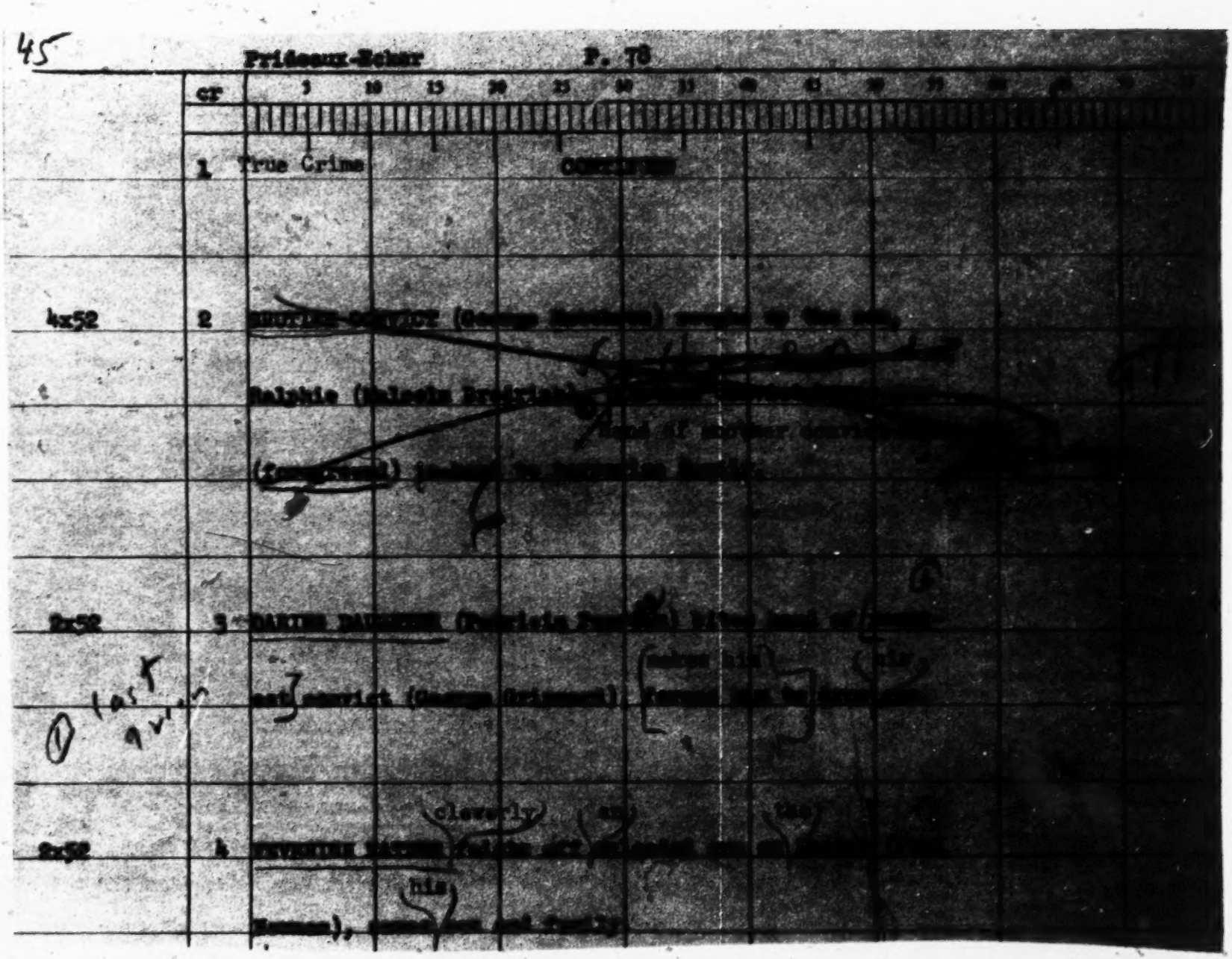

44
p. 76
5 10 15 20 25 30 35 40 45 50 55 60 65 70 75
2x52
4 BRAVE TRY
BOLD ATTEMPT
last quarter

[fol. 399]


45
Prideaux-Acker
P. 76
CF
1 True Crime
4x52
2
Ralphie
4x52
3
4x52
4
clearly
his

[fol. 400]

prideaux-ecker p. 78 retype
cc

1 CONTINUED

4x52 2 BRUTISH CONVICT (George Matthews) roughs up the young son, Ralphie (Malcolm Brodrick), who shows his spunk by talking up to the criminals invaders. The hand of another convict holds a gun (foreground) to terrorize the family. revolver

3 attached

4 attached

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PAGE

[fol. 401]

368

Ordeal of family trapped by convicts gives Broadway a new thriller, "The Desperate Hours"

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[fol. 402]

PLAINTIFFS' EXHIBIT 29

ARTICLES PUBLISHED IN LIFE MAGAZINE FROM FEBRUARY 1945 THROUGH FEBRUARY 1955 COVERING PLAYS AND MOTION PICTURES WHICH REFERRED TO REAL PERSONS OR EVENTS

February 5, 1945, page 71:

"A Song To Remember", motion picture.
(Frederic Chopin, George Sand)

April 16, 1945, page 105:

"The Barretts Of Wimpole Street", play.
(Robert Browning, Elizabeth Barrett and her family)

July 9, 1945, page 61:

"Ernie Pyle's 'Story of G. I. Joe' ", motion picture.
(Ernie Pyle and actual soldiers of World War II)

August 6, 1945, page 79:

"The Pride Of The Marines", motion picture.
(Sgt. Al Schmid, U. S. Marine hero of World War II)

September 3, 1945, page 74:

"The First Gentleman", play.
(George IV, King of England)

December 31, 1945, page 61:

"They Were Expendable", motion picture.
(Navy Lts. John Bulkeley and Bolling Kelly, P-T boat commanders in World War II)

[fol. 403] February 11, 1946, page 56:

"The Magnificent Yankee", play.
(Chief Justice Oliver Wendell Holmes, Jr., of the U. S. Supreme Court)

June 3, 1946, page 89:

"Annie Get Your Gun", play with music.
(Annie Oakley and Frank Butler, circus performers)

June 24, 1946, page 81:

"Anna and the King of Siam", motion picture.
(Anna Leonowens, British writer and lecturer of Victorian times, and King Mongkut of Siam)

September 16, 1946, page 76:

"Sister Kenny", motion picture.
(Sister Elizabeth Kenny, Australian nurse and polio therapist.)

March 24, 1947, page 87:

"Boomerang!", motion picture.
(Connecticut murder trial with Homer S. Cummings, later U. S. Attorney General, as defense attorney)

November 24, 1947, page 116:

"Unconquered", motion picture.
(French and Indian War period of American colonies)

November 24, 1947, page 97:

"The Winslow Boy", play.
(The case of George Archer-Shee, British naval cadet accused of theft during reign of Edward VII)

[fol. 404] November 20, 1950, page 73:

"Cyrano de Bergerac", motion picture.

(Cyrano de Bergerac, 17th Century French poet-cavalier)

October 8, 1951, page 76:

"The Desert Fox", motion picture.

(Field Marshal Erwin Rommel of the German Army, and his desert campaigns in World War II)

April 7, 1952, page 139:

"Five Fingers", motion picture.

(Eliaza Banza, Albanian spy of World War II, known also as "Cicero")

January 19, 1953, page 64:

"Moulin Rouge", motion picture.

(Henri Toulouse-Lautrec, 19th Century French Artist)

January 19, 1953, page 51:

"The Children's Hour", play.

(Two unidentified Scotch schoolteachers of the early 19th Century)

June 22, 1953, page 119:

"The Great Houdini", motion picture.

(The late magician and escape artist known as "Houdini")

June 22, 1953, page 69:

"My Name Is Legion", play.

(Clifford Beers, onetime mental patient and later a prominent advocate of mental hospital reforms)

[fol. 405] October 25, 1954, page 134:

"Suddenly", motion picture.

(Assassination of United States Presidents)

January 24, 1955, page 55:

"Prince of Players", motion picture.

(Edwin Booth, American tragedian of the 19th Century)

February 14, 1955, page 31:

"Anastasia", play.

(Princess Anastasia, daughter of the last Czar of Russia, and a woman now living who claims to be the said Princess)

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PAGE

how LIFE gets the story

behind the scenes in photo-journalism

written and edited by Stanley Rayfield

Doubleday & Company, Inc.
Garden City, New York, 1955

[fol. 406] PLAINTIFFS' EXHIBIT 31 373

FOREWORD

The purpose of this book is to add a plus or a bonus to the pluses and bonuses which members of the editorial staff—photographers, reporters and editors—strive to put into each issue of LIFE.

In each issue we try to give the reader what he will get nowhere else, an added knowledge and appreciation of the topics of the day and his wonderful world. Along with this, we try to give through pictures and words a sense of participation in this world. But over the years we have become aware that there is something else about which the public at large and professional journalists are curious.

"By what magic," asks one reader in more flowery words than we would dream of using, "does LIFE draw to it so many millions of Americans . . . heighten our awareness of the world . . . and give us the sense of living more abundantly?"

Probably few will agree that magic is the basic element—certainly the editorial staff doesn't. So what we hope will be a bonus about the bonuses of LIFE is not the recipe for a witch's potion. It is a glimpse at some of the

[fol. 407]

374

extraordinary qualities and techniques which produce LIFE's week-to-week surprises and underlie its character.

For "magic" we might substitute a combination of the following:

Intuitive sympathy and identification with the subjects of a story.

Willingness to risk danger and physical discomfort.

Ability to use camera equipment, reportorial skills and every imaginable production device to convey exact meanings.

Ability to plan for the expected and the unexpected.

Luck (*which means being like a good ball team that forces its own breaks*).

Knowing when to be bold and when to tread softly (*being psychologically hep*).

Ability to share with the reader a sense of participation, whether in mountain climbing or deep sea photography or in the more familiar adventures of everyday life.

An insatiable curiosity.

An appreciation of the American right to know and enjoy what is going on.

This book is mostly about photographers and reporters, the front-line troops. We think this is the most interesting phase of our activities because it is the purpose of LIFE to transport its readers to places where things are and where

[fol. 408]

things happen. There are—to revert to military terminology—many others who provide logistical support and man the all-important lines of communication to the public. They are the editors, art directors, administrators, technicians and production workers who sweat anonymously at all kinds of hours.

One man, whose name is not on the editorial masthead, must emerge from anonymity at this point. He is Stanley Rayfield, the author and editor of this book. A LIFE promotion man, he lives almost entirely in an editorial world, both at the front line and at GHQ in the Time & Life Building. Stan was an international journalist with *The Times* of London and an advertising man with the Kudner Agency in New York. He is a photographer and artist in his own right. I think that he conveys a remarkably accurate sense of what makes LIFE tick. I'm sure you will agree as you now start to inspect his examples of how LIFE brings home the story.

EDWARD K. THOMPSON
Managing Editor, LIFE

[fol. 410]

PLAINTIFFS' EXHIBIT 32

Story on Page 2

PHILADELPHIA DAILY NEWS
"Over the land of the free"
THE PEOPLE'S PICTORIAL
7 STAR EDITION

VOL. XXVIII—No. 142 ★ Philadelphia, Friday, September 12, 1952 Entered as 2d-Class Matter, March 31, 1896, at The Postoffice at Philadelphia, Pa., under the act of March 3, 1879. 5 CENTS EVERYWHERE $1.30 a month or $12.00 a year by mail in U. S. A.

BANK ROBBERS HOLD FAMILY IN WHITEMARSH PRISONERS;

'Press-Newspapers - US- Phila. Daily News'

8/1

RETURN TO
TIME, INC.
APR 8 1955
FILE

USED IN LIFE
Feb 28/55
PP 75

[fol. 412]

DEFENDANTS' EXHIBIT A

WAPI-4-9/12/MONTGOMERY COUNTY, Penna::James Hill and four of his five children, (L-R) Betsy,15, Clyde and Bobby,4, and James,11, as they broadcast their story of how three escaped convicts from Lewisburg Prison held the family captive for 14 hours in their Montgomery County home.(UNITED PRESS TEL

"All the News That's Fit to Print"

The New York Times.

LATE CITY EDITION
Some cloudiness, and no warm today. Cloudy and cooler tomorrow. Temperature Range Today—Max., 83; Min., 68. Temperature Yesterday—Max., 89.5; Min., 71.5. Full report on page 31.

Copyright, 1952, by The New York Times Company.

VOL. CI..No. 34,546. NEW YORK, SATURDAY, SEPTEMBER 13, 1952. FIVE CENTS

FEDERATED EUROPE IS WIDELY FAVORED IN POOL ASSEMBLY

First Day of Debate on Plan Shows Majority of Members Support Political Unity

ONLY 3 SPEAKERS OPPOSED

Coal-Steel Group Declines a Joint Secretarial Service With European Council

By ROBERT C. DOTY
Special to The New York Times.

STRASBOURG, France, Sept. 13—The first full dress debate in Europe's first sovereign supranational assembly demonstrated today a clear intention on the part of a majority of the seventy-eight delegates from six nations to move rapidly toward the goal of a political federation.

Delegates of France, West Germany, Italy, Belgium, the Netherlands and Luxembourg completed the work of organizing themselves into the Assembly of the European Coal and Steel Community and began consideration of a ministerial invitation to work out a plan for a political authority linking their nations.

Paul-Henri Spaak of Belgium, the ardently federalist president of the Assembly, opened the debate by proposing that the Assembly accept a recommendation of the coal-steel community ministers and meet Monday as a special committee to begin the drafting task.

Three Oppose Proposal

Three speakers presented arguments against acceptance of the far-reaching new mandate, alleging that the Assembly's task was to supervise the construction of a single market for the coal and steel industries of the member countries. The Assembly has neither the mandate nor the time to permit the acceptance of a larger assignment, they said.

Eight others presented the ministers' proposal as an opportunity for which the members of the Consultative Assembly of the fourteen-nation Council of Europe had struggled in vain for four years against the opposition of the ruling Committee of Ministers in that body; so in effect the answer to the "aspirations of millions of Europeans ultimate."

The Assembly's response to these opposed points of view left no room for doubt that a decisive federalist majority would be registered when M. Spaak's proposal came to a vote.

Earlier the Assembly invested M. Spaak and his five vice presidents with the right to name the Assembly's permanent secretary. There has been considerable pressure on the Assembly to accept common secretarial services with the Council of Europe, in whose headquarters the session is being held.

Secretary to Be Named

This issue was considered settled for M. Spaak was expected to name a permanent secretary not connected with the Council of Europe to desired by Jean Monnet, minister of coal-steel pool plan and chairman of the High Authority, his executive branch.

According to observers best placed to interpret the Assembly's action, this jealousy of its prerogatives did not prejudice in any way the establishment of mutually profitable links with the Council of Europe, an objective of the plan advanced by Anthony Eden, British Foreign Secretary.

Assenting to their view the so-called Eden plan as a concept of close association between the supranational continental community and Britain and other non-member nations is still in the process of elaboration along lines satisfactory to both elements. But the Eden plan, as interpreted by the Council of Europe's secretariat as a series of proposals for mingling the institutions of the two bodies, already has been rejected in effect.

The British mission to the High Authority of the coal-steel community, headed by Sir Cecil Weir, set the pattern for consultation between the organization plan and non-member nations. According to this interpretation it could be paralleled at the levels of the Ministerial Council and the Assembly by joint committees for liaison on matters of common interest that would not threaten or dilute the supranational character of the coal-steel community.

But both the Ministerial Council and the Assembly already have taken decisions eliminating the likelihood of a closer marriage. The council already has appointed its own secretary — Christian Calmes of Luxembourg. The par-

Continued on Page 4, Column 8

Eisler Is Silenced By German's Query

Special to The New York Times.

BERLIN, Sept. 13—Gerhart Eisler, East German chief of information, held a press conference today to issue an East German Government White Book attacking the Bonn peace contract with the Western Allies, but he ran into a little unexpected trouble.

After having delivered a vitriolic speech charging that the text of the peace contract disclosed the designs of the Bonn Government leaders to place the country in the hands of the United States, he made himself available for questions.

Two East German newspapermen asked questions, obviously designed to give Herr Eisler an opportunity to continue the attacks, which he did. Then a member of the audience, who described himself as a "worker," stood up and demanded:

"Why is it that in this White

Continued on Page 4, Column 3

NEO-NAZIS DISBAND PARTY IN GERMANY

Socialist Reich Secretary Says Members' Lives Are in Peril—9 Officials of Group Held

By DREW MIDDLETON
Special to The New York Times.

BONN, Germany, Sept. 13—The Socialist Reich party, largest and best organized of the post-war German Neo-Fascist organizations, announced its dissolution today.

Shortly after the announcement in Hanover, nine officials of the party were arrested in Detmold, Westphalia, where they were organizing a Fascist congress under the guise of a "national rally movement."

Government officials feared that this movement might be a key to future underground operations by members of the Socialist Reich party.

According to Fritz Heller, executive secretary of the party, it was dissolved because the leaders did not want to risk the lives of the members. This "risk" resulted from the fact that the Soviet secret police in East Germany knew the names of party members, Herr Heller added.

Bundan Ties Reiterated

This explanation satisfies no one. Government sources who have been watching the party carefully in the last six months said the organization had split completely on the question of taking financial aid from Soviet sources. The group that decided to do so will now go underground, Bonn officials fear.

Bonn explanation is necessary for the dissolution of a party that had a registered membership of 30,000 to 60,000 and more than 270,000 supporters in the single state of Lower Saxony.

Although the Socialist Reich party had only one representative in the West German Bundestag in the person of Dr. Fritz Dorls, one of its leaders, it had fifteen representatives in the Lower Saxony state legislature and eight members in the Bremen Senate.

All these representatives of neo-nazism will continue to hold office as "independents."

Herr Heller indicated that the West German Government had "collaborated" with the Communists by trying to have the party banned and had had something to do with the Russians' learning the identity of the party leaders.

Like its predecessor, the Fas-

Continued on Page 4, Column 5

U. S. BOMBERS SMASH YALU POWER PLANT; SOUTH KOREANS GAIN

B-29's Loose a 300-Ton Blow on Supung in a 2d Attack Near Manchurian Border

NAVY RAIDS IN NORTHEAST

R.O.K. Units Seize Ridge, Fight Off Reds on 'Capitol Hill'—Sabre Jets Down MIG

By LINDESAY PARROTT
Special to The New York Times.

TOKYO, Saturday, Sept. 13—United Nations warplanes carried out another heavy attack last night against the big Supung (Suiho) hydroelectric plant on the Yalu River, within 1,000 yards of the Manchurian border. The plant has been a main source of power for the Mukden-Dairen industrial complex of North China.

Thirty-five B-29 Superforts of the Far East Air Forces Bomber Command plastered the power installation, once the most important in North Korea, with 300 tons of explosives, including 2,000-pound armor-piercing bombs. It was the second raid on the plant, the first having been made last June when carrier planes and fighter-bombers of the Fifth Air Force swarmed over the area in what until then had been the heaviest attack of the war.

[United States Navy planes from carriers off the Northeast Korean coast blasted Hoeryong, also called Koinei, a major Communist supply center at a rail entry point from Manchuria into Korea, said a United Press dispatch. Hoeryong is forty miles from the Siberian line and the Navy airmen, flying at dawn Saturday off the carriers Princeton and Bon Homme Richard, were strictly briefed against going over non-Korean territory.]

Three Waves Strike at Supung

Reports from the Bomber Command said that since the June 23 attack at Supung, the Communists, assuming that the plant was being used only for "peaceful purposes," had made desperate attempts to repair the damage to transformer yards, generators and distribution points. Reconnaissance flights had indicated that the target was sufficiently "fattened" for a new strike —this time by the powerful medium bombers based on Japan and Okinawa.

The heavily loaded B-29's were over the target for two hours and forty minutes, dropping their projectiles by electronic aiming.

The final estimate of the damage to installations under repair was not available, pending assessment of all reports. Crews returning from the scene called the results "good to excellent."

Several enemy night fighters made non-firing passes during the attack but apparently no determined interception was attempted by the Communist airmen.

The assault was made in three waves by the 307th Bomb Wing and the Nineteenth Bomb Group from Okinawa and the Japan-based Ninety-eighth Bomb Wing. B-36 bombers flew as a protective screen. The attackers used "improved" aiming techniques that permitted precision bombing in the dark.

Since the June foray, Air Force headquarters said, the Communists "appear to have considered the attempted rehabilitation of Suiho of prime importance, and to have

Continued on Page 2, Column 3

2 Colombian Liberal Chiefs Get Asylum in Venezuelan Embassy

By The United Press.

BOGOTA, Colombia, Sept. 13—until tomorrow night, the Presidential Palace announced.

The nation expects Dr. Urdaneta Arbeleez to outline what may be expected in the immediate future after nearly five years of bloody internecine struggle.

The palace announcement offered no explanation for the postponement. Well-informed observers believed, however, it was intended to give Dr. Urdaneta Arbeleez additional time for further consultations with leaders of the armed forces and of both embittered political parties.

Dr. Urdaneta Arbeleez announced two Liberal party leaders—other than Señor Lopez and Dr. Lleras Restrepo—to the palace yesterday to discuss the situation with a view to restoring internal peace.

Gen. Rafael Sanchez Amaya, highest ranking Colombian Army

Continued on Page 5, Column 6

6 Seized in Thefts Netting $1,000,000

By ALFRED E. CLARK

A burglary gang of six men, including a "master planner" who engineered more than 100 hold-ups and burglaries in New York, New Jersey and Connecticut whose loot valued at upward of $1,000,000 was obtained, has been taken into custody, District Attorney Frank S. Hogan announced yesterday.

The lead that brought about the arrest of four members of the ring came from a "cat burglar" suspect arrested by New York detectives in Great Neck, L. I., on Aug. 24 after they had been trailing him for more than a month.

Mr. Hogan said the prisoner, Robert Russell, refused to discuss his burglary activities until Karl Grebow, one of the prosecutor's aides, went to the Nassau jail to talk with him. Russell informed Mr. Grebow, Mr. Hogan said, that he had worked as a combined chauffeur and thief for a man he knew only as "Jack" from White Plains.

On the basis of Russell's description of "Jack" and a mention that he was an inveterate cigar smoker and horse race devotee, Mr. Grebow searched through police files with Police

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SEWER TEST BARES HALF-BLOCK DEFECT

Pipe Found Missing in Project by G. C. Clemente as Queens Traces a Water Fault

By WILL LISSNER

Borough President James A. Lundy of Queens reported yesterday that his engineers had found a defective half-block section in a $93,000 sewer built by G. C. (Jack) Clemente in Springfield, south of Laurelton. Mr. Clemente is a brother of Victor Clemente, Queens sewer contractor now under fire for defects found in a Laurelton sewer project.

Mr. Lundy said the defective section was only one found so far in a series of tests made with the full cooperation of G. C. Clemente. As far as the engineers could tell, the portion examined elsewhere was of good construction and met specifications.

At 148th Road between 224th and 225th Streets, however, defective construction had been indicated by a depression in the street. Just before Labor Day a crew of the Bureau of Highway Maintenance dropped five yards of fill into the depression.

During the heavy rains of the Labor Day week-end, the five yards of fill disappeared, leading the engineers to believe the sewer pipe was draining ground water from the location. Henry Schneider Jr., superintendent of sewer maintenance, and Harry M. Fitts, his civil engineer, sent workmen down manholes into the 48-inch trunk sewer in 225th Street.

Although no houses are connected to the trunk sewer and its lateral lines, there was water in the pipe, and it was pouring in from the 10-inch lateral line on 148th

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3 Escaped Convicts Seize Family, Hold Home 19 Hours to Elude Hunt

By The Associated Press.

HAMBURG, Pa., Sept. 13—The police mobilized Pennsylvania's biggest manhunt in years today against three shotgun-toting jailbreakers who held a family captive in its home for nineteen hours, then sped sixty-five miles to rob a roadside diner and a little later raced past a police roadblock on a main highway to New York.

Hundreds of state and local officers and a horde of agents of the Federal Bureau of Investigation joined in the search. They were cautioned by F. B. I. circulars that the convicted bank robbers were "desperate and vicious."

The hunted men were carrying six shotguns and seven boxes of ammunition stolen from a sporting goods store in West Reading, Pa., forty-four hours after they had fled the Federal penitentiary at Lewisburg in the foggy pre-dawn hours of Wednesday.

In the next forty-eight hours of freedom they ranged 190 miles east almost to Philadelphia, stole at least three cars and stabbed a private-duty policeman who they feared had become suspicious.

The police working on the case said it was not unlikely that the trio had decided to hole up again, possibly by capturing another family and taking refuge in its home.

The fugitives are two brothers from Harlan County, Ky.—Joseph Wayne Nolen, 26 years old, and Ballard French Nolen, 23—and Elmer Scheer, 21, of Chicago.

The Nolen brothers were serving twenty-five-year terms for a bank robbery in Cincinnati in 1950. Scheer, a slender young man who had the word "lucky" tattooed over a horseshoe on his right arm and the motto "Death or glory" over a dagger on his left arm, was serving thirteen years for the 1950 robbery of a Chicago bank.

The most sensational of the fugitives' escapades came today. At about 5 A. M. two men with shotguns walked into the Donald Hockman diner on Route 22 in this quiet borough thirty-five miles north of Harrisburg. They lined up two employes and four patrons, scooped $135 from the cash drawer and about $100 more from the customers' wallets and quietly walked away, warning the six to lie on the floor.

A third man was waiting in the getaway car, which raced northeast toward Allentown on the main Harrisburg-New York route. Forty-five minutes later the police manning a roadblock near Allentown saw a two-tone Pontiac sedan pass by, and the search swung north to that area.

Hours later, James J. Hill, the

Continued on Page 28, Column 3

STEVENSON ASKS WHO HIS RIVAL IS: TAFT OR EISENHOWER

Declares General Begs 'Kind Word' From Ohioan and G.O.P. Is Two Parties

HE CLOSES WESTERN TOUR

Stresses Peril of Communism, Scores Opponent for Backing Jenner and McCarthy

Texts of the Stevenson speeches are printed on Page 8.

By JAMES RESTON
Special to The New York Times.

ALBUQUERQUE, N. M., Sept. 13—The Democratic Presidential candidate, Gov. Adlai E. Stevenson of Illinois, ended his 6,700-mile trip of the West today by asking whom he was running against—Gen. Dwight D. Eisenhower or Senator Robert A. Taft of Ohio.

Referring to today's meeting in New York between the General and the man he defeated for the Republican Presidential nomination, Mr. Stevenson said in a speech at Phoenix, Ariz., that he had heard very little about the liberal members of the Republican party who had done so much to nominate General Eisenhower at the Republican Convention at Chicago.

"In recent weeks," he said, "the junior Republican party seems about to be swallowed up by its big bad older brother. I no longer hear the voices which sang with sweet reasonableness for the General before the Chicago massacre. Someone seems to have muzzled them. Maybe they sounded too much like Democrats."

This was regarded as a reference to such pro-Eisenhower Republicans as Senator Henry Cabot Lodge Jr. of Massachusetts, the General's former campaign manager; Herbert Brownell of New York, who was one of the managers behind the Eisenhower preconvention campaign, and Governor Dewey of New York.

Continues Wedge Strategy

Continuing his strategy of trying to drive a wedge between the conservative and liberal wings of the Republican party and sharpening his personal attack against General Eisenhower, the Democratic nominee openly suggested that maybe General Eisenhower was no longer in charge of his campaign for the Presidency at all.

"Now we have the spectacle," he said, "of the candidate who won the nomination seeking out his defeated rival and begging for a kind word. I'm beginning to wonder who won at Chicago, anyway, and who my opponent really is. Maybe the Republicans now have a six-star general!"

In Albuquerque, the Governor hammered at the same point. He declared:

"The elephants put their two heads together in New York today for a peace conference * * *. It looks as if Taft lost the nomination but won the elephant."

Mr. Stevenson spoke three times today. About 1,000 persons heard

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TAFT TO HELP EISENHOWER; BIDS FOLLOWERS BACK HIM; TWO AGREE ON BASIC ISSUES

UNITY MEETING: Senator Robert A. Taft of Ohio clasps hands with Gen. Dwight D. Eisenhower, Republican Presidential candidate, after their meeting at the Eisenhower home here.

TRUMAN TO STUMP THROUGH 24 STATES

Starts 8,500-Mile Whistle-Stop Trip Across Nation Sept. 27 —Talks Here on Oct. 11

By ANTHONY LEVIERO
Special to The New York Times.

WASHINGTON, Sept. 13—The White House announced tonight that President Truman would roll out on his railroad train on Sept. 27 for an 8,500-mile campaign trip and make seventy-five to one hundred whistle stops between San Francisco and New York.

The tentative itinerary indicated that Mr. Truman would cross twenty-four states and, with time out for night travel and Sundays, would talk in about twenty of them before he returned to Washington on Oct. 12.

In this trip, as extensive as any in his famous campaign of 1948, Mr. Truman is expected to cover all major and many minor issues of the Presidential campaign in at least six prepared speeches at key points and in many off-the-cuff talks from the back platform of his train.

Moreover, there were reports that when the 66-year-old President had finished this grueling fifteen-day trip he would make one or two more before Election Day. This last phase of his fight to help elect Gov. Adlai E. Stevenson of Illinois, the Democratic Presidential candidate, is expected to take in the pivotal states of Ohio and

Continued on Page 5, Column 1

MAHONEY ELECTED TO SUCCEED QUINN

Manhattan State Senator's Choice as Minority Leader Held Victory for DeSapio

Senator Francis J. Mahoney of the Nineteenth District, Manhattan, was elected yesterday as minority leader of the State Senate, succeeding the late Elmer F. Quinn, at a meeting of the Democratic Senators at the Biltmore Hotel. The new post carries a salary of $10,000, twice his present pay, and an expense allowance.

Senator Mahoney, who was backed by Paul E. Fitzpatrick, Democratic State Chairman, and Carmine G. DeSapio, leader of Tammany, received fourteen votes to three for Senator Frank D. O'Connor of the Sixth District, Queens, with four Senators not voting and one absent. The election of Senator Mahoney was regarded not only as a victory for Mr. DeSapio but a defeat for Mayor Impellitteri and the group in Tammany that seeks to oust Mr. DeSapio from the leadership.

Three of the Senators not voting were Mario M. DeOptatis, Louis L. Friedman and William Rosenblatt of Brooklyn, understood to be allied with the faction headed by Kenneth F. Sutherland and Assemblyman Eugene F. Bannigan, which is opposed to Francis J. Sinnott, Brooklyn Democratic leader. The other Senator not voting was John M. Brained Jr. of Richmond County, which is

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Texas Storm Disabled 107 B-36's, Or More Than Military Said It Had

By The United Press.

WASHINGTON, Sept. 13—The Air Forces reported today that a Texas tornado last week had damaged 106 B-36 heavy bombers and had destroyed another as a loss of the storm that $40,000,000.

The total of 107 is more of the giant atom-bomb carriers than the Air Force has ever before publicly admitted it possessed. Congressman revealed last year that an Air Force official had admitted there were then only eighty-seven of the intercontinental bombers ready for action, but those figures were never officially confirmed.

Seventy-two of the bombers, including the one destroyed, were parked at the Carswell Air Force Base at Fort Worth when the tornado struck. The other thirty-five B-36's were at the near-by Consolidated Aircraft Corporation plant.

The Senate Preparedness subcommittee already is investigating the case.

The Air Force said thirty-seven of the damaged bombers at Carswell already had been returned to active service by an emergency repair program. "Most" of the others will be back in service by Oct. 1, the report indicated.

The B-36's are the core of this country's Air Force striking power. The Air Force depends on these planes to deliver retaliatory atomic attacks should this nation be attacked.

Previous reports said twenty-six bombers had suffered minor damage, "several" suffered major damage and that one had been destroyed. The early estimate set the loss at from $16,000,000 to $50,000,000.

Today's more complete report came from the preliminary findings of an investigating team appointed by Gen. Hoyt S. Vandenberg, Air Force Chief of Staff. It did not specify the degree of dam-

Continued on Page 4, Column 8

OHIOAN WILL SPEAK

Promises to Deal With Personalities in Stump Tour for General

ACCORD IS REVISED HERE

It Stresses Limits on Taxing and Spending and Adheres to Labor Law Principles

Text of the Taft statement and question period, Page 8.

By LEO EGAN

Senator Robert A. Taft announced yesterday, following a two-hour breakfast conference with Gen. Dwight D. Eisenhower, that they were in full agreement on fundamental campaign issues and that he would work to the limit of his ability, without qualification, to bring about the election of the man who defeated him for the Republican Presidential nomination.

Meeting with reporters and radio commentators following the conference, Senator Taft said that General Eisenhower and he were 100 per cent in accord on domestic issues and that their difference of opinion on foreign policy was one of degree rather than purpose.

Senator Taft called upon all Americans, "particularly those who have confidence in my judgment and my principles," to "vote for Eisenhower and Nixon, Republican Senatorial candidates and House candidates."

Aid of Supporters Asked

In addition, he asked that all his supporters "bring others to the polls" to help.

Senator Taft was asked if he thought his stand would reassure his own supporters and get them behind the Eisenhower-Nixon campaign, and he replied that he did think so.

The Ohio Senator listed the following propositions as those on which he and the Republican standard bearer see eye to eye:

"The greatest threat to liberty today is internal, from the constant growth of big Government, through the constantly increasing power and spending of the Federal Government."

"A free economy cannot continue successfully if the total tax burden for the purposes of all government continuously exceeds 25 per cent of the national income."

"Our goal is (to hold Federal expenditures to) about $70,000,000,000 in (the) fiscal year 1954 and $60,000,000,000 in (the) fiscal year 1955 (to) make possible a reduction of taxes to the $60,000,000,000 level for the year 1955." (The present level is $71,000,000,000.)

"He believes strongly in our system of Constitutional limitations on Government power, abhors the left-wing theory that the executive has unlimited powers, such as [President] Truman's claim he could seize steel mills."

Retention of Labor Law

"Amendments [to the Taft-Hartley Act] should not change the basic principles of the law, that is, the right to free and representative collective bargaining without Government dictation, the right to strike except for brief waiting periods in national emergency cases, the prohibition of unfair labor practices on the part of both management and labor, prohibition of the closed shop, jurisdictional strikes and secondary boycotts, the protection of the right to work even under legalized union shop agreement and other individual rights of the individual union member, the omission of seizure of property as a remedy for national strikes except by special legislation."

"There will be no discrimination [in Federal appointments if the General is elected] against anyone because he or she has supported me."

Three points were included in a statement distributed by the Senator. In reply to questions, he said that General Eisenhower and he were also in accord on farm policy, and to the aged and other changes in the Social Security Law. Their joint opposition to new Federal ventures applied to the future,

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DEFENDANTS' EXHIBIT B

37

380

TRANSFER NEARER FOR YONKERS LINE

P. S. C. Completes Rehearing on Property Switch That Has Delayed Closing of Sale

A re-hearing on a proposed property exchange that has snagged the otherwise almost - complete transfer of lines of the Yonkers Railroad Company to the Westchester Citizens Transportation Committee was completed for the Public Service Commission yesterday by Harold M. Olmsted, examiner. The hearing was held in the commission's offices at 223 Broadway, where members of the commission will meet and probably will consider the matter on Sept. 22.

The Yonkers company, which operates nine trolley lines in lower Westchester County, is a subsidiary of the Third Avenue Transportation Corporation. Both are in bankruptcy under supervision of the Federal District Court. But the bankruptcy of the Yonkers unit will end if and when the transfer to the Westchester Citizens group takes effect.

Financial Soundness Promised

The Federal Court, after a hearing, approved the sale of the Yonkers lines, but a vital feature of the transfer is an exchange of trolley cars owned by The Third Avenue Transportation Corporation for a carborn owned by the Yonkers subsidiary. The Public Service Commission last month refused to approve this exchange. The commission also indicated it feared that an acquisition of debts of the Yonkers line by the Westchester Citizens group might prove too heavy a burden for the new group. Besides taking over the Yonkers debts, the purchasers are to pay Third Avenue Transportation $50,000.

At yesterday's hearing Leroy Frantz, a member of the Westchester Citizens group, offered assurances that he and his associates were prepared to make the Yonkers lines sound financially under the terms approved by the Federal Court.

A major consideration had been an $8,000,000 liability of the Yonkers line to the parent Third Avenue. This sum, it was shown, was beyond the resources of the Yonkers unit. Under the plan of the group, Mr. Frantz said, the Avenue transferee its claim against the Yonkers line to the Westchester Citizens group, which upon acquiring the Yonkers unit will cancel the debt.

As to other liabilities of the Yonkers group to be assumed by the Westchester Citizens organization, R. C. Vincent, counsel to the Westchester group, presented evidence of settlements of last claims and of precautions to be taken against lawsuits arising from accidents on the lines. Mr. Vincent said that consummation of the sale to the Westchester group alone would change the Yonkers line from a bankrupt debtor to a going operation, with assets exceeding liabilities by $300,000.

Mr. Frantz, outlining his committee's plans, said Yonkers transportation would be improved by the gradual substitution of buses for the trolley cars. Negotiations already have resulted in some tentative preparation for this switch, Mr. Frantz said he expected smooth relations with a union representing the Yonkers line's employes. The agreement will be reduced in number from 180 to 135.

DECISION ON CHAPMAN PUT OFF IN VICE CASE

Magistrate Paul Brenon reserved decision yesterday in Mid-Manhattan Court after hearing argument in the case of Samuel Chapman, dress manufacturer, who was arrested on Aug. 15 on a charge of possession of pornographic pictures.

Mr. Chapman also faces charges of procuring women for the purpose of prostitution, and will get a hearing on these charges on a later date.

In another aspect of the vice investigation, a 22-year-old brunette who gave her name as Arda Driscoll of 16 West Fifty-eighth Street, who said she had worked as a hat-check girl at Blair House, 30 West Fifty-ninth Street, was held in $10,000 bail by General Sessions Judge Francis L. Valente as a material witness with her consent.

The District Attorney's vice investigation has not yet reached the point where arrests are expected. Assistant District Attorney Burton said before Supreme Court Justice Joseph A. Gavagan, in resisting the application of Brion Hogan, accused of operating a house of prostitution, who is seeking a trial by jury rather than before three justices in the Court of Special Sessions. After hearing arguments, the court reserved decision.

Noah L. Peretz, Hogan's attorney, argued that because of the wide adverse publicity given the case, his client could not receive a fair trial, and said that Miss Stout's "good name has been trampled in the dust."

Mr. Burton said more arrests were expected.

SHOT IN ESCAPE ATTEMPT

Brooklyn Man Trying to Evade Arrest Felled by Police Bullet

A young motorist who resisted a motorcycle patrolman's attempt to arrest him last night was felled by a single bullet in an attempted escape in a crowded Brooklyn street. He is George Voorhees, 20 years old, a gas conversion worker, of 6261 Fresh Pond Road, Brooklyn. At Kings County Hospital his condition was said to be good. He is charged with felonious assault and driving without a license.

Motorcycle Patrolman Anthony Tomasino, attached to Motorcycle Squad 2, attempted to arrest Voorhees at Fourth Avenue and Sackett Street at 8:40 P. M. for reckless driving. Voorhees struck him, the police said, and later attacked two other patrolmen who attempted to help in the arrest. The prisoner then broke away and ran about thirty feet before he fell to the sidewalk, wounded.

Pennsylvania Family Held Captive 19 Hours by Convicts

Associated Press Wirephoto

Four children of Mr. and Mrs. Joseph J. Hill on lawn of their home in a Philadelphia suburb after they and the three other members of the family were held prisoners. The convicts got away from the Federal prison at Lewisburg on Wednesday and hid in the house until early Friday, taking turns sleeping while one guarded the family.

8 SEIZED IN THEFTS NETTING $1,000,000

Continued From Page 1

Capt. James Walsh and Sgt. William Mulligan. They singled out Jacob (Jack) Wissenfeld, 42 years old, of 3 Winthrop Avenue, White Plains, N. Y.

"It was decided to put a 'tail' on Wissenfeld in the hope of catching him in a burglary as occurred in Russell's case," the prosecutor said. "But last night, Captain Walsh ran into Wissenfeld on a New York Central commuter's train. Both recognized each other."

It was necessary for the officer to arrest Wissenfeld despite prior plans because the suspect was wanted in California for bail-jumping on an automobile larceny conviction which he had appealed. Wissenfeld has a long police record with arrests here and on the West Coast, Mr. Hogan said.

The questioning of Wissenfeld at the East Sixty-seventh Street station brought out that he had been the "finger man"—one who points out places or persons to be robbed—in scores of robberies since last spring here, in Westchester and Nassau Counties and in New Jersey and Connecticut.

One hold-up Wissenfeld was reported to have confessed "setting up" was in the apartment of William Bloom, a brush manufacturer at 266 Riverside Drive, last June 19. Wissenfeld told his interrogators the names of the two men who had entered the apartment disguised as delivery boys and had obtained $80,000 worth of jewelry and $1,100 from Mr. Bloom's wife and daughter.

The alleged suspects were quickly rounded up early yesterday and indicted on charges of grand larceny. They are Paul Sadowski, 38, a chauffeur, of 160 West Sixty-seventh Street, and Peter Milio, 30, of 309 West Seventy-sixth Street, who was said to have a clerk's job in a parole office. Last January they were arrested for several armed robberies. The police said the pair admitted the Riverside Drive hold-up and had discussed where they had concealed a .45-calibre automatic pistol that had been used.

As a result Myron Fiddle, 16, a truckman of 450 East Seventy-fourth Street, was arrested on a charge of violating the Sullivan Law. The police recovered the weapon in his apartment.

$80,000 Jewelry Recovered

The sixth man implicated in the case was arrested shortly after Mr. Grebow spoke with Russell last Monday. He was Gus Cherniak, 62, a jeweler, of 1250 Crotona Park East, the Bronx. In his apartment police found $80,000 worth of jewelry and silverware that he is alleged to have purchased from Russell and other thieves in New York County. He has been indicted on charges of receiving stolen property obtained in burglaries in the metropolitan area.

Mr. Hogan said that Russell admitted he had perpetrated at least thirty burglaries of the homes of persons in the city and the vicinity. The prosecutor said that the gang had committed more than 100 hold-ups and burglaries in the same period. He said that property recovered so far had been identified by thirty-one theft victims.

Late yesterday Wissenfeld was taken to Westchester County on a tour to point out to County Prosecutor George M. Postel and Captain Walsh the homes that he had ordered his gang to rob.

The name of only one theft victim in the county was revealed. Mr. Hogan said he understood that among the homes singled out by Wissenfeld was that of J. Luther Cleveland, president of the board of directors of the Guaranty Trust Company of New York, at 435 Fulton Street, Manhasset, Fulton Manor, N. Y.

Hogan Praises Police Work

Recounting the dramatic story leading up to the arrests, Mr. Hogan said it was "an example of the close work and fine cooperation between the law enforcement agencies of New York, Nassau and Westchester." He added that it also was "an example of what fair and decent treatment accorded a defendant by an assistant District Attorney can do. It pays off."

Five years ago Russell, who is 40, was picked up as a fourth offender in the burglary of an upper floor apartment. He was then permitted to plead to a misdemeanor and escaped a mandatory life sentence as a fourth felony offender.

When Russell was arrested Aug. 24 by members of the burglary squad, he was charged with house-breaking and possession of burglar's tools. He had been held without bail for action of the grand jury.

Last Monday, Russell said he was willing to talk if Mr. Grebow would see him. He trusted the assistant prosecutor and knew that he would receive a "fair break," Mr. Hogan quoted the prisoner as saying.

Russell told an amazing story of how he had worked for Wissenfeld as his chauffeur and appeared each morning at the White Plains home where Wissenfeld lived with his wife and child. Mr. Hogan said that Mrs. Wissenfeld was under the impression that her husband was a wealthy produce dealer. The prosecutor added that Wissenfeld's regular custom of leaving the house each morning, ostensibly to "go downtown," gave support to her belief.

The purported mastermind, however, spent his days either at the race track or in driving to various homes he thought were likely locations for lucrative robberies. Mr. Hogan said Wissenfeld made it a point to read assiduously the society columns of the daily newspapers. In this manner he was able to learn when a family might be out to the theatre, the horse shows or at another group's home.

Dressed as a Chauffeur

Russell, who through the years has been known to the police for his penchant for dressing up as a chauffeur, would drive Wissenfeld to a prospective victim's home. The two men would leave the car, Mr. Hogan continued, and Wissenfeld would "case" the place. He then would instruct Russell as to the manner the house should be entered. Later in the night, Russell, on Sidays in the higher priced, especially in year years was pointed out, considered to be inaccessible to intruders, would return and gain entry.

In speaking of the gang's widespread operations, the prosecutor said that there were "other Russells" and he indicated that more arrests would follow.

Russell apparently was spectacular in his career, when he ran into the arms of detectives on Aug. 24 at the home of Albert Corak at 22 Merrivale Road, Great Neck. He had been under surveillance by detectives James J. O'Connor, John Mullins, George Egner and William Whalen on a round-the-clock basis in which the police finally "put him to bed and run him from one day to another."

The police used three automobiles to shadow Russell, who dressed in his chauffeur's outfit, drove a gray Cadillac about Nassau County. When he entered the Corak home, he was there about twenty minutes when footsteps in the driveway frightened Russell and he fled out the back door. The police alleged that on his person they found a complete set of burglar's tools used to jimmy open a window.

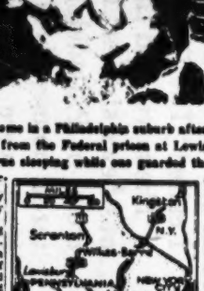
Mr. Hogan said that in the investigation his office had been aided by Assistant District Attorney Leonard Rubenstein of Westchester County, Assistant District Attorney Nicholas Castellano of Nassau County, Detectives Thomas Fitzpatrick and Edward Meehan of the Riverdale, N. Y., police, Detectives James Lynch and Cornelius Mullane of the White Plains police, and Sergeant Arnold Smith of the Nassau County police.

Candidate Spurns A. D. A. Aid

SYRACUSE, N. Y., Sept. 12 (AP)—Representative R. Walter Riehlman of Tully, a Republican, says he wants no endorsement from the Americans for Democratic Action in his re-election campaign. Mr. Riehlman said last night in a letter to Alfred H. Cope, head president of the liberal group, that he would not accept the endorsement if it were offered. The group had asked whether he wanted its endorsement, Mr. Riehlman said.

Morse Gives Report on Bases

WASHINGTON, Sept. 12 (AP)—Senator Morse Wayne, Republican of Oregon, said he submitted to President Truman a report on an inspection of overseas air bases and other defenses in a brief call at the White House today. Mr. Morse returned on Wednesday from a five-week trip.



The New York Times Sept. 13, 1952

MANHUNT ROUTE: In the area shown, officers sought three desperadoes who fled Wednesday from the Federal Penitentiary at Lewisburg, Pa. (1). The fugitives held a family captive for nineteen hours at White Marsh (2), a Philadelphia suburb.

NAMES OF 5 INDICTED AS GAMBLERS LISTED

BALLSTON SPA, N. Y., Sept. 12 (AP)—The names of five indicted men sought across the country in the Saratoga gambling inquiry were disclosed today.

They were indicted Monday on conspiracy, gambling and forgery charges, along with Meyer Lansky, 50 years old, of New York City, friend of several big-time gamblers, and James (Piggy) Lynch, 46, already serving time in New Jersey on a gambling charge.

Although the state's special investigators declined to reveal the names, it was learned that telotype slarms had been broadcast for:

Joseph (Doc) Stacher, alias Doc Harris and Doc Rosen, of South Orange, N. J., former crony of Abner (Longie) Zwillman.

Norman Weiner, alias Myman Weiner and Joseph A. Bond of Florida.

George Brown, believed to live in Florida.

Charles Manney, alias Charley Manning, Samuel Mann, and variations of these, New York City.

John (O. K.) Conkley of New York City.

All seven were indicted in connection with operations at Arrowhead Inn, Saratoga Springs night spot closed since 1947.

Lansky and Stacher were identified as founders of the L. & L. Company, allegedly formed to operate the Arrowhead Casino.

Lansky, identified before the Senate committee as a director of Thurber, Inc., surrendered here Wednesday. He was freed in $10,000 bail pending arraignment next Tuesday.

Knights of Lithuania Convene

Special to The New York Times.

DAYTON, Ohio, Sept. 12—More than 300 delegates of the Knights of Lithuania opened their thirty-ninth national convention today at a mass. The highlight of today's program was expected to be the adoption of a resolution asking the United Nations to investigate Russia's domination of Lithuania. The convention will close Sunday.

3 FUGITIVES HOLD FAMILY 19 HOURS

Continued From Page 1

sales manager of a hosiery plant at Lansdale, near Philadelphia, walked to a neighbor's home and telephoned the police that he, his wife and five children had been held captive by the fugitives at gunpoint for nineteen hours in their home.

Mr. Hill, who lives in the well-to-do White Marsh suburban area just north of Philadelphia, said the men had appeared at his home early yesterday, had marched in and had told Mrs. Hill, alone at the time with three young sons, that they would not be hurt if no effort was made to inform the police.

They were hungry, the man said, and needed rest. Through the day they took turns, two sleeping while the third stood guard. They ate several meals. As Mr. Hill and his two daughters returned from school and work they, like the rest of the family, were held prisoner.

The fugitives were "perfect gentlemen," Mrs. Hill told the police.

"They even apologized for interrupting a conversation," she said, and they reserved to amuse themselves by painting shotgunn at pictures on the wall and telling the boys—one 11, and the 4-year-old twins—that they wanted to "improve their aim."

Awakened at 2:00 A. M.

Last night the Hill family went to a single room. At 2:30 A. M. they were aroused by the fugitives, who said they were leaving. They ordered Mrs. Hill to report only the telephone wires and warned Mr. Hill not to notify the police before 9 o'clock. He complied. He said none of his family had been harmed during the ordeal.

The fugitives took some of Mr. Hill's clothing and his car, a two-tone Pontiac sedan similar to the one that brushed by the Route 22 roadblock later, after the robbery at the diner.

The jailbreak Wednesday was the first at the Lewisburg Penitentiary in sixteen years. The three men escaped a thirty-foot wall by improvised ladders. A little later they stabbed a campus guard, Raymond Dubiro, at near-by Bucknell University when he refused to drive them away in his car. He was not injured seriously.

Then the trio captured a salesman at the point of a knife, forced him to drive to a sporting goods store they intended to rob, but sped away in the car when the salesman ran away from them.

That car later was found abandoned in Harrisburg. Another car was stolen there and it was recovered today in Hamburg after the diner robbery.

Strike Halts Milwaukee Foods

MILWAUKEE, Wis., Sept. 12 (AP)—This city's food supply was threatened today by a strike of A. F. L. truck drivers and warehousemen against forty-eight grocery and produce concerns here. The strike involves 275 union members.

Currency Controller Denies 'Resistance' To Inquiry in Minsola Bank Swindle Case

Preston Delano, Federal Controller of the Currency, said yesterday in Washington that he had made available to Frank A. Gulotta, Nassau County District Attorney, all data "that could be of any assistance" in the swindle inquiry at the Central National Bank of Mineola, L. I.

Mr. Delano denied that his office had offered "passive resistance" to the investigation and said he hoped that an apparent "grave misunderstanding" would be clarified.

The District Attorney's office had sought a Federal bank examiner's report in connection with the alleged $475,000 loan swindle of the bank in connection with a Roslyn home improvement corporation. Mr. Gulotta charged that aides he requested the report a bank official hurriedly removed it from the files and sent it to the bank examiner's office in Manhattan where it was unavailable to him.

Mr. Delano said that in investigations of this nature authorities received "all information pertinent to such acts which appear, in reports" and that other portions "not pertinent to the case at issue are held to be confidential."

In Mineola Mr. Gulotta said last night that he had been assured of "full cooperation" by the bank's board of directors. He had spent two hours conferring with nine of the bank's twelve directors, headed by William H. Behrer, acting president.

LIED OUT OF FEAR, JACK GROSS SAYS

Gambler's Brother Testifies at Police Trial He Was Afraid of Reardon, Ex-Policeman

By IRA HENRY FREEMAN

Jack Gross, younger brother and employe of Harry Gross, convicted bookmaker, testified yesterday at the police trial that he had lied to a Kings County grand jury investigating his brother's dealings with policemen because he feared James E. Reardon.

Reardon is a former plainclothes patrolman of the Chief Inspector's office, who has been identified as collector of bribes from Harry Gross for superior police officers. Reardon, sentenced to two and a half years imprisonment for lying to the grand jury, was released from Sing Sing on Thursday in $10,000 bail on his appeal to the Appellate Division.

Young Gross had a rough day on the witness stand in the Criminal Courts Building, Third Deputy Police Commissioner James A. Dolehanty is hearing charges of misconduct against thirty-three suspended policemen. For the second successive day, the 25-year-old witness, who is testifying to help his brother, under sentence of twelve years for bookmaking, was battered by half a dozen of the thirteen defense lawyers on merciless cross-examination for five hours.

Lied on Cafe Ownership

Near the end of the session, when the young man was visibly tired and nervous, Sydney Rosenthal, last of the day's cross-examiners, drew from Gross the admission that he had lied to the grand jury in October, 1950, about the ownership of the Cafe Jamel, a gamblers' hangout" then on East Fiftieth Street, Manhattan.

Mr. Rosenthal brought out that Gross had told the grand jury he did not know who owned the place. Whereas at this trial he has testified the cafe was owned jointly by Harry Gross, Reardon, and the late Michael F. Aronson, an associate of the Gross $20,000,000-a-year bookmaking enterprise.

"I lied because I was afraid," Gross confessed.

"Whom were you afraid of, your brother?" Mr. Rosenthal demanded.

"No."

"Not of Aronson, he was dead?"

"No."

"Of Jim Reardon?"

"I don't know."

A little later, the witness said, "I feared Jim Reardon." When the lawyer asked why he had changed his testimony, Gross explained, "I was a little confused a minute ago."

Earlier, in the day, Gross had told of sharp words he had exchanged with Reardon in the Cafe Jamel in November, 1950. At that time, Harry Gross had fled to California temporarily, vanishing on $40,000 in bets he had lost to customers. Reardon, reasoning this, told Jack Gross, "You and your brother are all through, get out," the witness testified.

Reardon also demanded that young Gross surrender his automobile as payment for a debt Harry Gross owed Reardon, but Jack Gross managed to escape in the car to join his brother on the West Coast, according to the testimony.

In the last two days, Jack Gross has admitted committing perjury scores of times before the grand jury in October, 1950, because he was "afraid," but this was the first time he had an opportunity to say whom he feared.

Never Filed Tax Returns

Robert Blumberg, another defense lawyer, drew a new, damaging admission from the witness yesterday after reading him a letter Jack Gross had penned to his brother's employe from 1946 through 1949. Gross refused to answer because he might incriminate himself.

"What prison would he be involved?" Mr. Blumberg asked.

"Income tax here," Gross replied in a low voice. Then he refused, on the same ground, to say whether or not he had filed income tax returns for 1946 through 1949. Later on, however, under Mr. Rosenthal's barrage, Gross admitted he had never filed an income tax return.

Mr. Blumberg pressed the witness as he had prepared himself alone at the first police trial in October and November, 1951, six months before the Gross bookmaker decision to cooperate with Assistant Corporation Counsel Victor J. Herwitz, who is prosecuting all the accused policemen.

Gross granted that he had previously testified falsely he did not know the location of his brother's place of business, whereas at the current trial he has listed all of them from memory.

Gross denied vigorously that he had been "set up" or pressured into lying by Mr. Herwitz or anyone else for testifying now. He said he did not know whether any damages had been promised to Harry Gross for his testimony.

The trial will continue Monday morning.

JAILED IN RECORD THEFT

Two Who Looted Redfield Safe Get One to Five Years

RENO, Nev., Sept. 12 (AP)—The two men who engineered possibly the richest theft in United States history—the fabulous L. V. Redfield safe burglary here—pleaded guilty today and got one to five years in prison terms.

The pair, former Milwaukee, Wis., boxmen, will be eligible for freedom on parole in only ten months. Andrew R. Young, 46 years old, who was a convicted murder and robbery and John Trillagi, 37, whose record includes rape and gambling, pleaded guilty to state charges of daylight burglary.

They admitted entering the big Redfield home here last Feb. 28, and carting away the millionaire's bedroom safe with from $1,350,000 to $2,600,000 in cash, jewelry and securities.

The victim of the theft, La Vere Redfield, said the cash lost totaled $887,000, and said a reported today that $180,000 still was missing.

Ex-Member Is Accused Of Stealing the Church

By The United Press.

DUBLIN, Ga., Sept. 12—Deacons of the Shiloh Baptist Church swore out a warrant here today charging a former member of the congregation of stealing the church building.

Justice of the Peace Hall G. Thomas said that Deacon Ivey Stanley, along with other church officials, charged Belle Coley with "larceny of a church building" and Jab Haynes with "receiving stolen property."

It all happened, Deacon Stanley said, when he was ill in a hospital last month. Deacon Stanley had been doing some repair work on the building just before he became sick and when he was released from the hospital he found the church had vanished.

Stanley began a personal investigation of the mystery of the missing church and traced the structure to a spot in the southern section of Laurens County. He discovered that Belle Coley had sold the building to Haynes who, while the deacon was in the hospital, tore the church down, moved the materials and built himself a house, according to the Justice of the Peace.

MATTEAWAN SAFETY IS DOUBTED BY JURY

POUGHKEEPSIE, N. Y., Sept. 12 (AP)—A grand jury declared today that the Matteawan State Hospital for the Criminal Insane lacked sufficient attendants to guard against escapes by inmates.

In a presentment returned after an inquiry into the escape of two men from the institution at Beacon, N. Y., last July 28, the Dutchess County jury recommended increased personnel and equipment.

It said that the present superintendent, a staff and attendants were doing a commendable job, but the number of attendants was insufficient to guarantee their own safety or to curtail escapes from the institution.

The report, copies of which will be forwarded to Governor Dewey and to Edward J. Donovan, State Corrections Commissioner, recommended:

"That more attendants be employed for duty; that additional attendants be employed to work on the grounds, and that some of those be equipped with vehicles and/or, horses, and that police officers outside the building be equipped with modern communications system."

The jury also indicted the two escaped inmates, Bernard Rubbart, 36 years old, of Brooklyn, and William Bertoline, 18, of East Meadow, N. Y., on charges of conspiring to escape and grand larceny in the theft of two cars. They allegedly stole the automobiles here and made their way to New York City, where they were captured by police after a series of holdups.

GRAIN THEFTS CHARGED

Indiana Indictments Allege Federal Stocks Were Taken

INDIANAPOLIS, Ind., Sept. 12 (AP)—A Frankfort grain dealer and a Bloomington milling company were indicted today by a Federal grand jury on charges of unlawfully taking from Government storage 40,000 bushels of corn owned by the Commodity Credit Corporation.

Lawrence L. Augustus of Frankfort was accused of converting 24,000 bushels to his own use after farmers delivered it to his elevator. The Bloomington Milling Company, Inc., and one of its officials who has not been arrested, were indicted on the same charge in connection with the disappearance of 16,000 bushels.

The indictments said the Augustus conversion occurred between August and December, 1949, and the Bloomington conversion in July, 1950. The Bloomington company trucked the corn to a Louisville (Ky.) corporation with which it is associated and it was ground and mixed with soybeans, the indictment said.

$87,500 BAIL FORFEITED

4 Gold Smugglers Have Fled U.S. and Cannot Be Extradited

Bail totaling $87,500 has been forfeited for four gold smugglers who have fled the country, Assistant United States Attorney Louis J. Kaplan said yesterday.

Israel Russman, 39 years old, of Montreal, Canada, who was arrested last January with $20,000 in gold bars buttoned against from Canadian mines, fled to Israel and lost $25,000 bond. Two others who also fled to Israel were David Rosenberg, of 2323 Haven Street, Brooklyn, arrested with illegal possession of $25,525 in gold, who forfeited a $15,000 bond, and Abraham Neumann of Montreal, arrested while attempting to smuggle $15,000 in gold out of the country, who lost $10,000 in bail.

The fourth bail jumper is Charles M. Manning, charged with illegal possession of gold valued at $40,000. He is now living in Sydney, Australia, Mr. Kaplan said. His forfeiture amounted to $12,500. Mr. Kaplan said that the four could not be extradited because of treaties with those countries.

3 Get Payroll, in 'Stopped' Checks

BRISTOL, Pa., Sept. 12 (AP)—Three young men in a yellow convertible today robbed a Levittown subcontractor of a payroll—all in checks. John Majcenski of New York, a tile contractor at the housing project, told police he recognized two of the robbers as employes he had paid off—also by check. Mr. Majcenski did not disclose the amount of the payroll. He said he stopped payment on all the checks.

CHOKED with stomach GAS?

SEWER TEST BARES HALF-BLOCK DEFECT

Continued From Page 1

flood. To discover the source of the trouble, the engineers directed Mr. Clemente to open up the street at the depression. To do so took Mr. Clemente's workmen two and a half days, digging and pumping, because ground water conditions were so bad at that point.

Mr. Schneider said that in the twenty-foot section exposed they found a Y-spur, installed to lead to a house connection, was missing a section of pipe known to as an "eighth bend." It had a lot of concrete on top, which concretely indicated the workmen had trouble at the point. The spur was broken and fell apart when exposed.

A complete gap at the end of the spur admitted ground water that half filled the ten-inch sewer pipe, leaving it only 50 per cent effective for disposing of sewage. This accounted for the water in the trunk sewer.

Other Troubles Unearthed

As the examination proceeded, more serious trouble was discovered. Mr. Fitts determined with instruments the elevation of the lateral pipe and found it was ten inches below the elevation specified in blueprints. The lateral pipe is supposed to slope steadily one inch in every twenty feet until it enters the trunk sewer on 225th Street. At the point of entry the pipe is at the specified level.

The elevation readings indicated there was a belly or "sump" in the pipe, which would have acted as a trap, catching dirt and grit in the water, eventually the line would have become clogged. Why a "sump" occurred the engineers do not know. Because the ground is wet, the pipe had to be laid in a cradle of concrete 12 inches wide and 11 inches thick to give it support. This was done.

Although Mr. Clemente was said in general to have done a well-constructed job under difficult conditions, minor defects at the junction were reported. The spur used was not of the proper make. Other joints were caulked with oakum and hot pitch, but not enough pitch was used on the oakum that caulked the spur. The lateral pipe was connected to a drop pipe at the trunk, when it should have been brought through eighteen inches of concrete into the spur, to afford access for cleaning.

To correct the defective section, Mr. Clemente will have to excavate to 226th Street. He has promised to do so. Mr. Lundy pointed out that the complete job cost longer than caused the trouble. The contractor may have been the victim of very difficult ground conditions.

Victor Clemente Defiant

While G. C. Clemente was cooperating with borough authorities, his brother, Victor, maintained an attitude of defiance toward the city's inquiry. Victor Clemente's son, Dominick, signed a receipt for Mr. Lundy's letter ordering him to appear with specified workmen and equipment at 226d Avenues and 226d Street, Laurelton, at 8 A. M. Tuesday to begin reopening a sewer trench for inspection.

Whether Victor Clemente would do so, he would not say. J. Franklin Perrine, borough engineer, and Martin Nelson, sewer engineer, will await him.

Corporation Counsel Denis M. Hurley is expected to seek a contempt citation against Victor Clemente's accountant, who has refused to testify before Investigation Commissioner James E. Stein. The accountant pleads possible self-incrimination, but it is here on charges Victor Clemente's plea, however, may help him escape such a citation. Mr. Hurley said he would take every legal step possible to compel Victor Clemente to fulfill his obligations to the city.

ROBBERY SUSPECT HELD

Young Bridegroom Is Linked to 30 Hotel Hold-Ups Here

Willard D. Elmquist, 23-year-old bridegroom, who is charged with having committed thirty hotel hold-ups here in the last five months, was held without bail by Magistrate Joseph A. Martinis yesterday for grand jury action. Elmquist is charged with robbery and violation of the Sullivan Law.

In court, Assistant District Attorney John A. McAvinue Jr. said the prisoner had admitted armed hold-ups in "at least thirty hotels and had been positively identified in five cases."

Elmquist's bride of a day was not in court, although she obtained a lawyer for her husband. The lawyer, Henry S. Dresner, said Mrs. Elmquist was not present because she did not want to have her picture taken.

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"One of America's Foremost Resort Hotels"
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Celebrate New Year's at Totem. Services conducted. Festivities and entertainment befitting the occasion. And of course serving our nationally famous food.
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DEFENDANTS' EXHIBIT B
[fol. 414]
381

[fol. 415] DEFENDANTS' EXHIBIT G

From New York Sunday Times, January 30, 1955

FICTION OUT OF FACT

By Joseph Hayes

Author of "The Desperate Hours," due at the Barrymore Feb. 10.

PHILADELPHIA.

At the moment I am writing this, the newspapers are headlining a story about five guards held hostage in the Massachusetts State Prison. The news accounts concentrate on the action. But what of the more personal stories involved? What are the thoughts and emotions of the guards' waiting relatives? And what of the inner struggles of the convicts themselves? No matter how evil or violent in action, aren't these men human beings with their own needs, loves, hungers, fears?

It was out of conjectures such as these that, in the spring of 1953, I sat down to write a novel which, when completed, I called "The Desperate Hours."

The novel and the play version of it—was based on various news stories. In California, in New York State, in Detroit, in Philadelphia, frightened and dangerous men entered houses, held families captive in their own homes; these were headline stories, soon forgotten. Some ended tragically, others did not. The newspapers soon dropped all reference to them.

But what of the persons themselves? Accumulatively, these cold, black-on-white accounts stirred the question "What if?" In time, I found myself left with a curious and very strong emotion—a sense of personal identification with [fol. 416] the victims. And also—to my amazement—a baffling question: Why? Why had these events occurred and what possible meaning did they hold? Thinking about these "cases," I became more and more amazed, finally awed, by

the sense of immense accidentality framing these, and perhaps all, human situations.

Instead of researching any of the specific "cases," however, I found it best to let my imagination play with the idea. Meanwhile I reached into my own background and found a setting, the city of Indianapolis, where I was born, a typical city. After that, it was necessary to probe into my own convictions about people, ordinary, down-to-earth representative people—what did I really feel about them? What did I believe about them and how did they react under stress? Once I could answer that question honestly, I could begin "research."

Technically, I needed to make my police activity reasonably authentic—because, from the first, for many reasons, I had no doubt that I must use some unusual story-frame to intensify and to counterpoint the action taking place in the invaded and terrorized home. Out of this so-called "research" emerged an important character in the story, a deputy sheriff who, caught in a conflict between his own personal desires and his civilized concern for others, could represent to some extent my own feelings of disgust, understanding, anguish and admiration.

Evolution

Having decided on the frame and the essential conflict, I had then only one small job—to write the novel (and, later, the play and screen play). It was a day-and-night [fol. 417] job, done at white heat, the time limited by necessities imposed by illness in the family. Curiously enough, I discovered as I wrote that the principal theme came into focus: the life-and-death struggle between a typical, law-abiding man, with no knowledge of his own inner resources or of the precious quality of his way of life, and the twisted, jungle-like mind of a young criminal, himself a human being and a victim. It became more and more interesting to explore a mind that has almost totally escaped the civilizing influence of our society. (And why are there so many like him today?)

This mind became, as I worked, so complex and cunning that, almost automatically, the necessary plot-twists and surprises of story erupted, often to my own astonishment, so that in the end even the plot itself became something quite distinct from all the other hostage stories I had ever encountered.

In the news stories there was little to suggest what happens in the invaded and ravaged home: the terror of the family, the desperation and paradoxes in the criminals, the interaction of these characters caught in a situation that, in time, creates its own momentum, sets its own course. This course, and its ultimate resolution, seemed for a while to be determined by the warped mind of the young invader himself. It was he who devised the manner of holding an entire family not only captive, as in the actual incidents, but in this case mentally and emotionally hostage—so that even the civilized man, the father of the family, found within himself the jungle urges of revenge and a passion to murder.

[fol. 418] How could the young convict manage to do this? This boy—he is hardly more than that—could do it because, despite all of his own insecurities and banked-down rages and hatreds and fears, he instinctively understood what "family" could mean. He could create an atmosphere, as have governments, in which a man *appears* to move freely, to think for himself, to carry on a "normal" life while in actuality that man has become a slave. And why? Because of the deepest and most human concern of all—his love for his family. Out of this love, stirred so that he recognizes it himself in all its intensity and depth, comes submission to evil. I am willing to leave the question there. It is only one of many that I hope to leave echoing in the minds, and especially the hearts, of an audience.

The human emotions, only hinted at in the description of exterior events in a newspaper, and the complexities they suggest and the personal and social questions they pose, remain, a year and a half later, vital and interesting to me. Fortunately, I have been able to communicate my own deep

and aching concern—not only for the characters but for the human plight in general—to hundreds of thousands of novel readers, both here and abroad.

It is to the eternal credit of mankind that—at least up to now—some inherent personal force within civilized man has thwarted slavery, even if by a clearly defined violence that separates (roughly, at least) the civilized from the aggressive man—and even if by a hairbreadth. If this be melodrama, so be it. It is also history.

[fol. 419] DEFENDANTS' EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Plaintiffs designate New York County as the place of trial.

Plaintiffs reside in Fairfield County, Connecticut.

JAMES J. HILL, ELIZABETH SELFRIDGE HILL, BARBARA HILL, an infant, ELIZABETH HILL, an infant, JAMES J. HILL, JR., an infant, CLYDE HILL, an infant, and ROBERT HILL, an infant, each by his guardian ad litem, JAMES J. HILL, Plaintiffs,

—against—

JOSEPH HAYES, MARRIJANE HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC., THE LITERARY GUILD OF AMERICA, INC., CROWELL-COLLIER PUBLISHING CO., INC., POCKET BOOKS, INC., and READER'S DIGEST ASSOCIATION, INC., Defendants.

SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the

complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, [fol. 420] judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, June 27, 1955.

MUDGE, STERN, BALDWIN & TODD
Attorneys for Plaintiffs
Office and Post Office Address
40 Wall Street
New York 5, New York

[fol. 421]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JAMES J. HILL, ELIZABETH SELFRIDGE HILL, BARBARA HILL, an infant, ELIZABETH HILL, an infant, JAMES J. HILL, JR., an infant, CLYDE HILL, an infant, and ROBERT HILL, an infant, each by his guardian ad litem, JAMES J. HILL, Plaintiffs,

—against—

JOSEPH HAYES, MARRIJANE HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC., THE LITERARY GUILD OF AMERICA, INC., CROWELL-COLLIER PUBLISHING CO., INC., POCKET BOOKS, INC., and READER'S DIGEST ASSOCIATION, INC., Defendants.

COMPLAINT

Plaintiffs, by their attorneys, MUDGE, STERN, BALDWIN & TODD, allege, upon information and belief, except as to Paragraphs 1, 2, 3, 14, 15, 16, 17, 31, 42 and 43, which are alleged on knowledge, as follows:

[fol. 422] FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS HAYES, ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC., LITERARY GUILD OF AMERICA, CROWELL-COLLIER PUBLISHING CO., INC., POCKET BOOKS, INC. AND READER'S DIGEST ASSOCIATION, INC.:

1. Plaintiff, James J. Hill, his wife, plaintiff, Elizabeth Selfridge Hill, and their children, plaintiffs, Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Robert Hill, an infant, and Clyde Hill, an infant, are residents of Fairfield County, Connecticut.

2. (a) Plaintiff James J. Hill is Vice President and Director of Sales of Alba Hosiery Corporation and since on or about January 1, 1953 said plaintiff's office and place of business has been in New York County.

(b) Plaintiff James J. Hill is required, in the course of the performance of his employment, periodically to travel to every State of the United States and there to consult with customers, business associates and company personnel, and otherwise to transact business in such States.

(c) At all times since February, 1955, plaintiffs Barbara and Elizabeth Hill have been enrolled as students at Pennsylvania State University in University Park, Pennsylvania.

[fol. 423] 3. Plaintiff, James J. Hill, was appointed Guardian ad Litem for plaintiffs Barbara Hill, Elizabeth Hill, James J. Hill, Jr., Clyde Hill and Robert Hill, by order of Mr. Justice Samuel M. Gold, made at Special Term, Part II of the Supreme Court, New York County, on June 27, 1955.

4. Defendants Joseph Hayes and Marrijane Hayes are residents of Brookfield Centre, Connecticut.

5. Defendant Howard Erskine resides at 39 East 72nd Street, New York City, New York.

6. Defendant The Desperate Hours Company, is a New York partnership, having its office and principal place of business at 12 East 63rd Street, New York City, New York.

7. Defendant Time, Inc., is a New York corporation having its office and principal place of business at 9 Rockefeller Plaza, New York, New York, and is, and at all times hereinafter mentioned was, the publisher of "LIFE" magazine.

8. Defendant Paramount Pictures Corporation is a New York corporation having an office and place of business at 1501 Broadway, New York, New York.

9. Defendant Random House, Inc., is a New York corporation having its office and principal place of business [fol. 424] at 20 East 57th Street, New York, New York.

10. Defendant Literary Guild of America, Inc. is a New York corporation having its office and principal place of business at 501 Franklin Avenue, Garden City, Long Island, New York, and, as part of its business, conducts, manages and controls the "Book of the Month" Club.

11. Defendant Crowell-Collier Publishing Co., Inc., is a Delaware corporation having an office and place of business at 640 Fifth Avenue, New York, New York, and is, and at all times hereinafter was, the publisher of "COLLIER'S, THE NATIONAL WEEKLY".

12. Defendant Pocket Books, Inc., is a New York corporation having its office and principal place of business at 45 Rockefeller Plaza, New York, New York.

13. Defendant Readers Digest Association, Inc., is a New York corporation having an office and place of business at 230 Park Avenue, New York, New York.

14. In or about the month of September, 1952, plaintiffs Hill were held as hostages in their then home in Whitemarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, [fol. 425] Pennsylvania, all of said plaintiffs being released unharmed after a harrowing period of confinement and all

of said convicts being captured or killed after an extensive manhunt.

15. During the month of September, 1952 and at all times thereafter, plaintiff James Hill, acting for the members of his family as well as for himself, refused all offers of financial compensation for permission to interview him and his family and to publish feature articles and to conduct television or radio broadcasts concerning said events of September, 1952.

16. Said refusals were prompted by the desire of plaintiffs James and Elizabeth Selfridge Hill to avoid any course of conduct that might remind them or their children of the aforesaid events of September, 1952, to curtail further speculation, inquiry and comment by friends, business associates and others with respect to said occurrence, and to protect plaintiffs in their right of privacy.

17. In November, 1952, and prompted, in part, by their desire to avoid further reminders of the events of September, 1952, to avoid further publicity in connection therewith, and to protect their right of privacy, plaintiffs Hill moved from their home in Whitemarsh Township, Pennsylvania to their present home in Old Greenwich, Connecticut.

[fol. 426] 18. In or about the year 1953, defendant Hayes wrote, and defendant Random House, Inc. published a novel entitled "The Desperate Hours", and said novel was copyrighted by defendants Joseph and Marrijane Hayes.

19. Said novel "The Desperate Hours" was also published and/or distributed by defendant Literary Guild of America, Inc. as a "Book of the Month", by defendant Crowell-Collier Publishing Co. in serialized form, by defendant Pocket Books, Inc. in several paper-bound editions and by defendant Readers Digest Association, Inc. in digest form.

20. Said novel was distributed and sold in every State of the United States, including the State of New York, in

Canada, and in the British Isles, and was translated, distributed and sold in many other foreign countries.

21. Said novel purported to describe, in fictional form, a jailbreak near Indianapolis, Indiana, by three convicts, the invasion by said convicts of the home of a family named "Hilliard", the holding of said family as hostages, and the eventual killing or recapture of all of said escaped convicts.

22. In truth and in fact, said novel was based upon the actual occurrences of September, 1952 in which plaintiffs Hill were involved, as above set forth, with certain modifica-
[fol. 427] tions of the actual facts, including the partial modification of the name of the family involved from "Hill" to "Hilliard", the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of the members of the besieged family.

23. In or about the Fall of 1954, defendants Hayes and Erskine entered into a partnership or joint venture agreement for the purposes, among others, of selling the motion picture rights to the novel "The Desperate Hours" and producing a play based upon said novel, and, in connection with the foregoing, for the purpose of promoting said literary, motion picture and theatrical properties so as to develop and enhance their commercial value.

24. In or about the Fall of 1954, defendant Paramount Pictures Corporation purchased the motion picture rights to said novel "The Desperate Hours" for the sum of $100,-
000 cash, plus a percentage of the profits, said defendant Paramount agreeing not to release the motion picture prior to the year 1956.

[fol. 428] 25. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours," was filmed during the year 1955, has been distributed for public

exhibition and is now being, or in the future will be, exhibited in theatres in every State of the United States, including the State of New York, in Canada, the British Isles and in various other parts of the world.

26. In or about the Fall of 1954, a New York partnership doing business under the firm name and style of "The Desperate Hours Company", was organized in the State of New York, County of New York for the purpose, among other things, of producing the play "The Desperate Hours", said partnership consisting of defendants Hayes and Erskine as general partners and sixty-three additional persons as limited partners.

27. The play, "The Desperate Hours", was adapted by defendant Hayes from the novel, "The Desperate Hours," and, after a pre-Broadway tryout in Philadelphia, Pennsylvania, opened in New York on or about February 10, 1955, at the Barrymore Theatre.

28. Prior to said Broadway premiere of the play, "The Desperate Hours", defendants embarked upon a promotional and advertising campaign designed to stimulate public interest in the play, the novel and the forthcoming motion picture.

[fol. 429] 29. One of the principal aims of said advertising campaign was to identify the characters portrayed in the novel, play and motion picture, "The Desperate Hours" as real persons involved in a true-life occurrence which might have happened to any reader, or any member of the audience, thereby increasing the dramatic impact of the novel, play and motion picture and greatly increasing the commercial value thereof.

30. On or about February 1, 1955, and as part of said promotional and advertising campaign, defendants Hayes, Erskine and The Desperate Hours Company made arrangements with defendant Time Inc. to publish a special photographic layout in "LIFE" magazine which would disclose the true identity of the purportedly fictional "Hilliard"

family portrayed in "The Desperate Hours", thereby enhancing the dramatic interest of the play, novel and motion picture, "The Desperate Hours" and advertising its true-life origin to the millions of persons who read "LIFE" magazine, while simultaneously creating a sufficiently unique and imaginative "human interest" story to justify the allocation thereto of substantial space by a magazine with the vast national and international circulation of "LIFE" magazine.

31. In the February 28, 1955 issue of "LIFE" magazine, there appeared a 3-page article, with photographs, entitled [fol. 430] "TRUE CRIME INSPIRES TENSE PLAY", the body of said article stating, as follows:

> "The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller, 'THE DESPERATE HOURS'"
>
> "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel THE DESPERATE HOURS, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.
>
> "The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the scene of the crime."

The balance of said article consisted of photographs of a newspaper report of the true-life incident, the actual house [fol. 431] in which the plaintiffs Hill were held hostage, and the cast of "The Desperate Hours" portraying scenes

from said play in said house. A photostatic copy of said "LIFE" magazine article is annexed hereto as Exhibit A and made a part hereof as though set forth at length.

32. Said article and photographis layout in "LIFE" magazine was employed by defendants to promote and advertise the novel, play and motion picture, "The Desperate Hours", and defendant Time Inc. allowed "LIFE" magazine to be used for said promotional scheme in order to promote, for purposes of trade, its unique "human interest" story involving the plaintiffs as above set forth.

33. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme, pure and simple, and no legitimate occasion was there presented, as a matter of news dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliard" family of "The Desperate Hours", to reprint newspaper headlines of September, 1952 or to photograph the members of the cast of "The Desperate Hours" in the former home, and identified as such, of the plaintiffs Hill.

34. Said February 28, 1955 issue of "LIFE" magazine was published and distributed by defendant "Time Inc." in every state of the United States, including the State of [fol. 432] New York, in Canada, and in the British Isles, and was translated and distributed and sold in many other foreign countries.

35. In truth and in fact, said "LIFE" magazine article was planned, prepared and executed by defendants Hayes, Erskine and The Desperate Hours Company with the cooperation and assistance of defendant Time Inc.

36. Defendants Hayes, Erskine and The Desperate Hours Company paid a sum of money to one Stahlheber for the use, in connection with said "LIFE" magazine article, of the house in Whitemarsh Township, Pennsylvania in which plaintiffs Hill had formerly resided and in which they were actually besieged in September, 1952.

37. Defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to said house and there participated and assisted in the taking of the photographs which appeared in the "LIFE" magazine article of February 28, 1955.

38. Defendants Hayes, Erskine and The Desperate Hours Company participated and assisted in the preparation of the descriptive matter and photograph captions appearing in said "LIFE" magazine article of February 28, 1955 and said descriptive matter and photograph captions [fol. 433] were published with the knowledge and approval of said defendants.

39. Defendants Paramount Pictures Corporation, Random House Inc., Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc. and Reader's Digest Association, Inc. had knowledge of the publication of said "LIFE" magazine article of February 28, 1955 at or about the time of its publication and thereafter continued to publish and distribute their respective written and filmed versions of "The Desperate Hours".

40. In the October 10, 1955 issue of "LIFE" magazine extensive written and photographic coverage was given by defendant Time Inc. to the motion picture, "The Desperate Hours", and specific reference was therein made to the February 28, 1955 issue of "LIFE" magazine in which the names of plaintiffs were used and in which plaintiffs were expressly identified as the "Hilliard" family of "The Desperate Hours", and in the advertising for said motion picture, numerous and highly dramatic references have been made to its "real-life" aspects, the emphasis and innuendo of said advertising being that what happened to the family portrayed in "The Desperate Hours" was drawn from real events and might actually happen to any American family.

[fol. 434] 41. The writing, publication, distribution and sale of the novel, "The Desperate Hours", the writing, production and exhibition of the play and motion picture "The

Desperate Hours" and the preparation and publication of the "LIFE" magazine article of February 28, 1955, were not, and were not intended as, a fair and accurate report of news whether past or current, but were solely for the purposes of entertainment, advertisement and trade.

42. By reason of the specific identification by defendants Hayes, Erskine and The Desperate Hours Company in said "LIFE" magazine article of the plaintiffs Hill as the "Hilliard" family of "The Desperate Hours," the publication and distribution in the State of New York of said "LIFE" magazine article by defendants Time Inc. and defendants Hayes, Erskine and The Desperate Hours Company, the publication and distribution in the State of New York of the novel "The Desperate Hours" by defendants Hayes, Random House, Inc., Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc. and Pocket Books Inc., the production and exhibition in the State of New York of the play "The Desperate Hours" by defendants Hayes, Erskine and The Desperate Hours Company, and the production, distribution and exhibition in the State of New York of the motion picture, "The Desperate Hours" by defendant Paramount Pictures Corporation, constitute a por- [fol. 435] trayal of plaintiffs Hill and a use of their portraits and names by said defendants for purposes of trade and advertising, and the use by said defendants of plaintiffs' portraits and names as aforesaid was without the written consent first obtained of any of the plaintiffs and was entirely without any consent or authorization at any time from any of the plaintiffs and said defendants used, and have continued to use, such portraits and names unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

43. By reason of the unauthorized use by defendants of plaintiffs' portraits and names, plaintiffs have been subjected to considerable emotional distress and embarrassment, have been subjected to extensive and undesirable publicity and comment, have sustained serious impairments

of their ordinary business, social and educational relationships, have been compelled to deny the accuracy of the characterizations and incidents in "The Desperate Hours", and have otherwise been embarrassed, distressed and injured by said defendants' unlawful use of their names and portraits and by the distorted, fictional characterization in the several versions of "The Desperate Hours" of the personalities, relationships and emotional attitudes of plaintiffs as well as of the actual events which befell plaintiffs in September, 1952, and, by virtue of all of the foregoing, [fol. 436] plaintiffs are entitled to compensatory and exemplary damages from said defendants in the amount of $350,000.

44. Unless restrained from doing so, said defendants intend to continue the unlawful use of plaintiffs' names and portraits in the State of New York in connection with the novel and the motion picture, "The Desperate Hours", and plaintiffs will be thereby irreparably damaged in a manner and to an extent not compensable in money damages and plaintiffs have no adequate remedy at law therefor.

* * * * * * *

WHEREFORE, plaintiffs demand judgment herein against defendants (1) awarding to plaintiffs damages in the sum of Three Hundred and Fifty Thousand ($350,000) Dollars, (2) permanently restraining and enjoining any further distribution and sale of the novel "The Desperate Hours", (3) permanently restraining and enjoining any further exhibition of the play "The Desperate Hours", (4) permanently restraining and enjoining any further exhibition of the [fol. 437] motion picture "The Desperate Hours", and (5) awarding to plaintiffs the costs and disbursements of this action.

Dated: October 13, 1955.

MUDGE, STERN, BALDWIN & TODD,
Attorneys for Plaintiffs
Office and P. O. Address
No. 40 Wall Street
New York 5, N. Y.

[fol. 438]
STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES J. HILL, being duly sworn, deposes and says: That he is one of the plaintiffs described in the foregoing instrument; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES J. HILL

Sworn to before me this
13th day of October, 1955.

CAROLYN TERWILLIGER
CAROLYN TERWILLIGER
NOTARY PUBLIC, State of New York
Qual. in Richmond Co. No. 43-3955550
Cert. Filed in N. Y. Co. Clk's.
Term Expires March 30, 1957

[fol. 439]
SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JAMES J. HILL and ELIZABETH SELFRIDGE HILL, Plaintiffs,

—against—

JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC. and POCKET BOOKS, INC., Defendants.

AMENDED COMPLAINT

Plaintiffs by their attorneys, MUDGE, STERN, BALDWIN & TODD, for their amended complaint herein, allege:

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF JAMES J. HILL ALLEGES:

1. In or about the month of September, 1952, plaintiff James J. Hill and his wife, plaintiff Elizabeth Selfridge Hill and their children were held hostage in their then home in Whitemarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, Pennsylvania, all of said convicts being sub-
[fol. 440] sequently captured or killed after an extensive manhunt.

2. During the month of September, 1952 and at all times thereafter, Plaintiff James J. Hill, acting for the members of his family as well as for himself, refused to grant permission to interview him and his family and to publish feature articles and to conduct television or radio broadcasts concerning said events of September, 1952.

3. Said refusal was prompted by the desire of plaintiffs to avoid any course of conduct that might remind them or their children of the aforesaid events of September, 1952, to curtail further speculation, inquiry and comment by friends, business associates and others with respect to said occurrence, and to protect plaintiffs and their family in their right of privacy.

4. In or about the year 1954, defendant Joseph Hayes wrote, and defendant Random House, Inc., a New York corporation, published, and from time to time thereafter, republished, a novel entitled "The Desperate Hours".

5. Said novel was distributed and sold in every State of the United States, including the State of New York, in Canada, and in the British Isles, and was translated, distributed and sold in many other foreign countries.

[fol. 441] 6. Said novel purported to describe, in fictional form, a jailbreak near Indianapolis, Indiana, by three convicts, the invasion by said convicts of the home of a family

named "Hilliard", the holding of said family as hostages, and the eventual killing or capture of all said escaped convicts.

7. In truth and in fact, said novel purported to depict plaintiffs and members of their family, and was based upon the actual occurrences of September, 1952 in which plaintiffs Hill and their family were involved, as above set forth, with certain modifications of the actual facts, including the partial modification of the name of the family involved from "Hill" to "Hilliard", the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of plaintiffs and the members of their family.

8. Upon information and belief, at all times subsequent to the publication of said novel, defendant Hayes was authorized by defendant Random House, Inc. to undertake such promotional and advertising activities as might advance the sales of said novel to the mutual advantage of defendant Hayes as author and defendant Random House, Inc., as publisher.

[fol. 442] 9. In or about the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three additional persons as limited partners, said co-partnership doing business under the firm name and style of "The Desperate Hours Company".

10. On or about February 1, 1955, and as part of an advertising and promotional campaign defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company made arrangements with, and caused, defendant Time, Inc., a New York corporation, to publish a special

photographic layout in "LIFE" magazine which disclosed the true identity of the purportedly fictional "Hilliard" family portrayed in "The Desperate Hours", thereby enhancing its dramatic interest and advertising its true-life origin to the millions of readers of "LIFE" magazine, while simultaneously creating a sufficiently unique and imaginative "human interest" story to justify the allocation thereto of substantial space by a magazine with the vast national and international circulation of "LIFE" magazine.

11. In the February 28, 1955 issue of "LIFE" magazine, which was distributed in every state of the United States and in many foreign countries, there appeared a 3-page article, with photographs, entitled "TRUE CRIME INSPIRES [fol. 443] TENSE PLAY", the body of said article stating, as follows:

> "The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller, 'THE DESPERATE HOURS'"
>
> Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel THE DESPERATE HOURS, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.
>
> The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the scene of the crime."

The balance of said article consisted of photographs of a newspaper report of the true-life incident, the actual house

in which the plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" portraying [fol. 444] plaintiffs Hill and members of their family in scenes from said play in said plaintiffs' former home. A photostatic copy of said "LIFE" magazine article is annexed hereto as Exhibit A and made a part hereof as though set forth at length.

12. In connection with the "LIFE" magazine article of February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to plaintiffs' former home and there participated and assisted in the taking of photographs which appeared in said "LIFE" magazine article of February 28, 1955, and further in connection therewith, a sum of money was paid for the use of said house to the then occupant thereof.

13. Upon information and belief, defendants Hayes, Erskine and The Desperate Hours Company further participated and assisted in the preparation of the descriptive matter and photograph captions appearing in said "LIFE" magazine article of February 28, 1955 and said descriptive matter and photograph captions were published with the knowledge and approval of said defendants.

14. Upon information and belief, defendant Random House, Inc. had knowledge of the specific identification of [fol. 445] plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute the novel, "The Desperate Hours."

15. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff James J. Hill and a use of his name and portrait by defendants Joseph Hayes and Random

House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

16. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business and social relationships, [fol. 446] has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and his family as well as of the actual events which befell plaintiff and his family in September, 1952.

17. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of $50,000.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF JAMES J. HILL ALLEGES:

18. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 hereof as though herein set forth at length.

19. In or about the year 1954, defendant Pocket Books, Inc., a New York corporation, published, and from time to time thereafter, republished, a paper-back edition of the novel "The Desperate Hours", and said paper-back editions

were distributed and sold in every State of the United States, including the State of New York, and in various foreign countries.

[fol. 447] 20. Upon information and belief, at all times subsequent to the publication of said novel, defendant Hayes was authorized by defendant Pocket Books, Inc. to undertake such promotional and advertising activities as might advance the sales of said novel to the mutual advantage of defendant Hayes as author and defendant Pocket Books, Inc. as publisher.

21. Upon information and belief, defendant Pocket Books, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute the paper-back edition of the novel, "The Desperate Hours".

22. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of [fol. 448] Section 50 of the Civil Rights Law of the State of New York.

23. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of $50,000.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF JAMES J. HILL ALLEGES:

24. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 hereof as though herein set forth at length.

25. The play "The Desperate Hours" opened in New York on or about February 10, 1955, at the Barrymore Theatre and continued its run until the Fall of 1955; and said play was also produced and exhibited by defendants Hayes, Erskine and The Desperate Hours Company in London, England among other places.

26. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used [fol. 449] plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

27. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of $50,000.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF JAMES J. HILL ALLEGES:

28. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 18 hereof as though herein set forth at length.

29. Upon information and belief, in or about the Fall of 1954, defendant Paramount Pictures Corporation, a New York corporation, purchased the motion picture rights

to the novel "The Desperate Hours" from defendants Hayes, Erskine and The Desperate Hours Company for the sum of $100,000 cash plus a percentage of the profits, said defendant Paramount agreeing not to release the motion picture prior to the year 1956.

30. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours", was filmed in or [fol. 450] about the year 1955, has been distributed for public exhibition and has been exhibited in theatres in every State of the United States, including the State of New York, in Canada, the British Isles and in various other parts of the world.

31. Upon information and belief, at all times subsequent to the sale to defendant Paramount Pictures Corporation of the motion picture rights to "The Desperate Hours", defendant Hayes was authorized by defendant Paramount Pictures Corporation to undertake such promotional and advertising activities as might advance the commercial value of the motion picture "The Desperate Hours" to the mutual advantage of defendants Hayes and Paramount.

32. Upon information and belief, defendant Paramount Pictures Corporation had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, released said motion picture for distribution and exhibition.

33. At or about the date of the release of said motion picture, the October 10, 1955 issue of "LIFE" magazine gave extensive written and photographic coverage to the motion [fol. 451] picture, "The Desperate Hours", and specific reference was therein made to the February 28, 1955 issue of "LIFE" magazine in which the name of plaintiffs was used and in which plaintiffs were expressly identified as members of the "Hilliard" family of "The Desperate

Hours", and in the advertising for said motion picture, numerous and highly dramatic references were made to its real life aspects, the emphasis and innuendo of said advertising being that what happened to the family portrayed in "The Desperate Hours" was drawn from real events and might actually happen to any American family.

34. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

35. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of $50,000.

[fol. 452] FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, AND TIME, INC., PLAINTIFF JAMES J. HILL ALLEGES:

36. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 and 30 hereof as though herein set forth at length.

37. The article and photographic layout in the February 28, 1955 issue of "LIFE" magazine was employed by defendants Hayes and Erskine to promote and advertise the novel, play and motion picture, "The Desperate Hours", and defendant Time, Inc. allowed "LIFE" magazine to be used for said promotional scheme in order to promote, for purposes of trade, its unique "human interest" story involving the plaintiffs as above set forth.

38. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme calculated to advance the commercial value of novel, play and motion picture "The Desperate Hours", and no legitimate occasion was there presented, as a matter of new dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliards" of "The Desperate Hours", to reprint newspaper headlines of September, 1952 or to photograph the members of the cast of "The Desperate Hours" in the former home, and identified as such, of the plaintiffs Hill.

[fol. 453] 39. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants Hayes, Erskine and Time, Inc. for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

40. By virtue of all of the foregoing plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine and Time, Inc. in the amount of $50,000.

FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

41. Plaintiff repeats and realleges paragraphs 1-14 hereof as though herein set forth at length.

42. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Random House, Inc.

for purposes of trade, and the use by said defendants of [fol. 454] plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

43. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and her family as well as of the actual events which befell plaintiff and her family in September, 1952.

44. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of $50,000.

[fol. 455] For a seventh cause of action against defendants Joseph Hayes and Pocket Books, Inc., plaintiff Elizabeth Selfridge Hill alleges:

45. Plaintiff repeats and realleges paragraphs 1-14, 19-21 and 42 hereof as though herein set forth at length.

46. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and

a use of her name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

47. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of $50,000.

FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS [fol. 456] COMPANY, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

48. Plaintiff repeats and realleges paragraphs 1-14, 25 and 42 hereof as though herein set forth at length.

49. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

50. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of $50,000.

FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

[fol. 457] 51. Plaintiff repeats and realleges paragraphs 1-14, 29-33 and 42 hereof as though herein set forth at length.

52. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

53. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of $50,000.

FOR A TENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, AND TIME, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

54. Plaintiff repeats and realleges paragraphs 1-14, 37, 38 and 42 hereof as though herein set forth at length.

[fol. 458] 55. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants Hayes, Erskine and Time, Inc. for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with

knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

56. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine and Time, Inc. in the amount of $50,000.

Wherefore, each of said plaintiffs demands judgment against defendants Joseph Hayes and Random House, Inc. in the amount of Fifty Thousand ($50,000) Dollars, against defendants Joseph Hayes and Pocket Books, Inc. in the amount of Fifty Thousand ($50,000) Dollars, against defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of Fifty Thousand ($50,000) Dollars, against defendants Joseph Hayes and Paramount Pictures Corporation in the amount of Fifty Thousand ($50,000) Dollars and against defendants Joseph Hayes, Howard Erskine and Time, Inc. in the amount of [fol. 459] Fifty Thousand ($50,000) Dollars.

Mudge, Stern, Baldwin & Todd,
Attorneys for Plaintiffs
Office and P. O. Address
No. 40 Wall Street
New York, N. Y.

[fol. 460]

State of New York
County of Westchester } ss.:

Elizabeth Selfridge Hill, being duly sworn deposes and says: That she is one of the plaintiffs described in the foregoing amended complaint; that she has read the same and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein

stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

(sgd.) ELIZABETH SELFRIDGE HILL

Sworn to before me this
7th day of March, 1956.

CAROLYN TERWILLIGER
NOTARY PUBLIC, State of New York
Qual. in Richmond Co. No. 43-3955550
Cert. Filed in N. Y. Co. Clk's.
Term Expires March 30, 1957

[fol. 461]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JAMES J. HILL and ELIZABETH SELFRIDGE HILL,

Plaintiffs,

—against—

JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC. and POCKET BOOKS, INC.,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs by their attorneys, MUDGE, STERN, BALDWIN & TODD, for their second amended complaint herein, allege:

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF JAMES J. HILL ALLEGES:

1. In or about the month of September, 1952, plaintiff James J. Hill and his wife, plaintiff Elizabeth Selfridge Hill and their children were held hostage in their then

home in Whitemarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, Pennsylvania, all of said convicts being subsequently captured or killed after an extensive manhunt.

[fol. 462] 2. During the month of September, 1952 and at all times thereafter, Plaintiff James J. Hill, acting for the members of his family as well as for himself, refused to grant permission to interview him and his family and to publish feature articles and to conduct television or radio broadcasts concerning said events of September, 1952.

3. Said refusal was prompted by the desire of plaintiffs to avoid any course of conduct that might remind them or their children of the aforesaid events of September, 1952, to curtail further speculation, inquiry and comment by friends, business associates and others with respect to said occurrence, and to protect plaintiffs and their family in their right of privacy.

4. In or about the year 1954, defendant Joseph Hayes wrote, and defendant Random House, Inc., a New York corporation, published, and from time to time thereafter, republished, a novel entitled "The Desperate Hours."

5. Said novel was distributed and sold in every State of the United States, including the State of New York, in Canada, and in the British Isles, and was translated, distributed and sold in many other foreign countries.

6. Said novel purported to describe, in fictional form, a jailbreak near Indianapolis, Indiana, by three convicts, the invasion by said convicts of the home of a family named [fol. 463] "Hilliard", the holding of said family as hostages, and the eventual killing or capture of all said escaped convicts.

7. In truth and in fact, said novel purported to depict plaintiffs and members of their family, and was based upon the actual occurrences of September, 1952 in which plaintiffs Hill and their family were involved, as above set forth,

with certain modifications of the actual facts, including the partial modification of the name of the family involved from "Hill" to "Hilliard", the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of plaintiffs and the members of their family.

8. Upon information and belief, at all times subsequent to the publication of said novel, and the filming of the motion picture based thereon, defendant Hayes was authorized by the publisher-defendants Random House, Inc., Pocket Books, Inc. and defendant Paramount Pictures Corporation to undertake such promotional and advertising activities as might enhance the commercial value of said novel and motion picture to the mutual advantage of defendants [fol. 464] Hayes, Random House, Inc., Pocket Books, Inc. and Paramount Pictures Corporation.

9. In or about the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three additional persons as limited partners, said co-partnership doing business under the firm name and style of "The Desperate Hours Company".

10. On or about February 1, 1955, as part of an advertising and promotional campaign designed to promote the novel, motion picture and play, "The Desperate Hours," and pursuant to the authority granted to him by defendants Random House, Inc., Pocket Books, Inc. and Paramount Pictures Corporation as set forth in paragraph 8 hereof, defendant Joseph Hayes, together with defendants Howard Erskine and The Desperate Hours Company made arrangements with, and caused, defendant Time, Inc., a New

York corporation, to publish a special photographic layout in "LIFE" magazine which disclosed the true identity of the purportedly fictional "Hilliard" family portrayed in "The Desperate Hours", thereby enhancing its dramatic interest and advertising its true-life origin to the millions of readers of "LIFE" magazine, while simultaneously creating a sufficiently unique and imaginative "human interest" story to [fol. 465] justify the allocation thereto of substantial space by a magazine with the vast national and international circulation of "LIFE" magazine.

11. In the February 28, 1955 issue of "LIFE" magazine, which was distributed in every state of the United States and in many foreign countries, there appeared a 3-page article, with photographs, entitled "TRUE CRIME INSPIRES TENSE PLAY", the body of said article stating, as follows:

> "The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller, 'THE DESPERATE HOURS'"
>
> "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel THE DESPERATE HOURS, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.
>
> "The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a [fol. 466] family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the scene of the crime."

The balance of said article consisted of photographs of a newspaper report of the true-life incident, the actual house in which the plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" portraying plaintiffs Hill and members of their family in scenes from said play in said plaintiffs' former home. A photostatic copy of said "LIFE" magazine article is annexed hereto as Exhibit A and made a part hereof as though set forth at length.

12. In connection with the "LIFE" magazine article of February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to plaintiffs' former home and there participated and assisted in the taking of the photographs which appeared in said "LIFE" magazine article of February 28, 1955, and further in connection therewith, a sum of money was paid for the use of said house to the then occupant thereof.

13. Upon information and belief, defendants Hayes, Erskine and The Desperate Hours Company further par- [fol. 467] ticipated and assisted in the preparation of the descriptive matter and photograph captions appearing in said "LIFE" magazine article of February 28, 1955 and said descriptive matter and photograph captions were published with the knowledge and approval of said defendants.

14. Upon information and belief, defendant Random House, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute further editions of the novel, "The Desperate Hours."

15. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a

portrayal of plaintiff James J. Hill and a use of his name and portrait by defendants Joseph Hayes and Random House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

[fol. 468] 16. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business and social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and his family as well as of the actual events which befell plaintiff and his family in September, 1952.

17. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of $50,000.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF JAMES J. HILL ALLEGES:

18. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

[fol. 469] 19. In or about the year 1954, defendant Pocket Books, Inc., a New York corporation, published, and from

time to time thereafter, republished, a paper-back edition of the novel "The Desperate Hours", and said paper-back editions were distributed and sold in every State of the United States, including the State of New York, and in various foreign countries.

20. Upon information and belief, defendant Pocket Books, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute further editions of the paper-back edition of the novel, "The Desperate Hours."

21. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use [fol. 470] plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

22. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of $50,000.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF JAMES J. HILL ALLEGES:

23. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

24. The play "The Desperate Hours" opened in New York on or about February 10, 1955, at the Barrymore Theatre and continued its run until the Fall of 1955; and said play was also produced and exhibited by defendants Hayes, Erskine and The Desperate Hours Company in London, England among other places.

25. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and [fol. 471] a use of his name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

26. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of $50,000.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF JAMES J. HILL ALLEGES:

27. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

28. Upon information and belief, in or about the Fall of 1954, defendant Paramount Pictures Corporation, a New York corporation, purchased the motion picture rights to the novel "The Desperate Hours" from defendants Hayes, Erskine and The Desperate Hours Company for the sum of [fol. 472] $100,000 cash plus a percentage of the profits, said defendant Paramount agreeing not to release the motion picture prior to the year 1956.

29. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours," was filmed in or about the year 1955, has been distributed for public exhibition and has been exhibited in theatres in every State of the United States, including the State of New York, in Canada, the British Isles and in various other parts of the world.

30. Upon information and belief, defendant Paramount Pictures Corporation had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, released said motion picture for distribution and exhibition.

31. At or about the date of the release of said motion picture, the October 10, 1955 issue of "LIFE" magazine gave extensive written and photographic coverage to the motion picture, "The Desperate Hours", and specific reference was therein made to the February 28, 1955 issue of "LIFE" magazine in which the name of plaintiffs was used and in which [fol. 473] plaintiffs were expressly identified as members of the "Hilliard" family of "The Desperate Hours", and in the advertising for said motion picture, numerous and highly dramatic references were made to its "real-life" aspects, the emphasis and innuendo of said advertising being that what happened to the family portrayed in "The Desperate Hours" was drawn from real events and might actually happen to any American family.

32. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have

continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

33. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of $50,000.

[fol. 474] FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, RANDOM HOUSE, INC., POCKET BOOKS, INC., PARAMOUNT PICTURES CORPORATION, AND TIME, INC., PLAINTIFF JAMES J. HILL ALLEGES:

34. Plaintiff repeats and realleges paragraphs 1-13, 16 and 29 hereof as though herein set forth at length.

35. The article and photographic layout in the February 28, 1955 issue of "LIFE" magazine was employed by defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., and Paramount Pictures Corporation to promote and advertise the novel, play and motion picture, "The Desperate Hours", and defendant Time, Inc. allowed "LIFE" magazine to be used for said promotional scheme in order to promote, for purposes of trade, its unique "human interest" story involving the plaintiffs as above set forth.

36. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme calculated to advance the commercial value of novel, play and motion picture "The Desperate Hours", and no legitimate occasion was there presented, as a matter of new dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliards" [fol. 475] of "The Desperate Hours", to reprint newspaper headlines of September, 1952 or to photograph the members of the case of the "The Desperate Hours" in the former home, and identified as such, of the plaintiffs Hill.

37. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

38. By virtue of all of the foregoing plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of $50,000.

FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

39. Plaintiff repeats and realleges paragraphs 1-14 hereof as though herein set forth at length.

[fol. 476] 40. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Random House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

41. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesir-

able publicity and comment, has sustained serious impairment of her social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and her family as well as of the actual events which befell plaintiff and her family in September, 1952.

[fol. 477] 42. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of $50,000.

FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

43. Plaintiff repeats and realleges paragraphs 1-13, 19-20 and 41 hereof as though herein set forth at length.

44. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

45. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from de-
[fol. 478] fendants Joseph Hayes and Pocket Books, Inc. in the amount of $50,000.

FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

46. Plaintiff repeats and realleges paragraphs 1-14, 24 and 41 hereof as though herein set forth at length.

47. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

48. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of $50,000.

[fol. 479] FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

49. Plaintiff repeats and realleges paragraphs 1-14, 28-31 and 41 hereof as though herein set forth at length.

50. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in

violation of Section 50 of the Civil Rights Law of the State of New York.

51. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of $50,000.

[fol. 480] FOR A TENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, RANDOM HOUSE, INC., POCKET BOOKS, INC., PARAMOUNT PICTURES CORPORATION AND TIME, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

52. Plaintiff repeats and realleges paragraphs 1-14, 35-36 and 41 hereof as though herein set forth at length.

53. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

54. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of $50,000.

WHEREFORE, each of said plaintiffs demands judgment against defendants Joseph Hayes and Random House, Inc. [fol. 481] in the amount of Fifty Thousand ($50,000) Dollars, against defendants Joseph Hayes and Pocket Books, Inc. in the amount of Fifty Thousand ($50,000) Dollars, against defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of Fifty Thou-

sand ($50,000) Dollars, against defendants Joseph Hayes and Paramount Pictures Corporation in the amount of Fifty Thousand ($50,000) Dollars and against defendants Joseph Hayes, Howard Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of Fifty Thousand ($50,000) Dollars.

MUDGE, STERN, BALDWIN & TODD,
Attorneys for Plaintiffs
Office and P. O. Address
40 Wall Street,
New York 5, N. Y.

[fol. 482]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES J. HILL, being duly sworn, deposes and says: That he is one of the plaintiffs described in the foregoing second amended complaint; that he has read the same and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES J. HILL

Sworn to before me this
3rd day of July, 1956.

BERNARD A. COHN
NOTARY PUBLIC, State of New York
Qual. in Bronx Co. No. 03-1604300
Cert. filed with Bronx & N. Y. Co.
Clerk's & Register's offices
Term Expires March 30, 1957

[fol. 483]

DEFENDANTS' EXHIBIT J

Excerpt from the March 1954 issue of
The Literary Guild Review WINGS

ABOUT THE DESPERATE HOURS

By JOSEPH HAYES

FROM THE TOP of our hill in Connecticut—*Obtuse Hill,* the highway marker reads—it is possible to see, at night, far off across a lake, the circle of lights that is the Federal Correctional Institution of Danbury. Bright as a carnival, sinister as a gun, they catch the imagination, hold it in pity, or horror, or simple curiosity. Not as an author but as a husband and father, I have sometimes found myself asking the silent question: "What if——?" The lights are not far away. "What if there were a prison break, and one or more of those desperate men escaped in this direction?"

Then, over a year ago, the newspapers carried accounts of two incidents, both front-page stories. These had no relationship to me, to my life with my lovely red-haired wife and my two lively red-headed sons. One described an occurrence in New York State, not far away. An escaped convict had forced his way into a home, held a woman and her small daughter at knife-point until the police closed in; in the subsequent and inevitable violence, while attempting to escape, the man had stabbed the child to death. Shortly after this, or perhaps a month or two before, three men escaped from a prison even further away from my [fol. 484] secure and comfortable home. Holding a family hostage, they hid there, eating and sleeping, and then left, without violence, without the inevitable bloodshed. Newspaper readers all over the country breathed relief, felt the chill leave them. But an astonishment lingered. These were vicious and frightened men. How fortunate that family

had been! Then, like myself, how many readers asked themselves, quietly: What if——?

That question, the one which creates all stories, held me in its grip. Not only as a husband and father who could glimpse, between the cold black lines of newsprint, the fear and horror that the innocent people involved in both cases must have experienced—but this time as a writer, too, I asked: "What if——?"

Out of this conjecture grew the incidents and suspense of my story—and the characters: the surprisingly strong Dan Hilliard; his frightened wife, Eleanor; their nineteen-year-old daughter, the quick-witted and defiant Cynthia; their son Ralphie, too young to realize the consequences of his childish bravery; and Jesse Webb, the young deputy sheriff, a stranger to the Hilliards, yet linked to them by the invisible bond of his own deep human

The phone could be an instrument of rescue . . . or of their destruction.

[fol. 485]

DEFENDANTS' EXHIBIT K

Excerpt from the January 13, 1955 issue of
The Philadelphia Inquirer, page 11, Columns 1 and 2.

LOCUST OFFERS THRILLER IN 'DESPERATE HOURS'

By HENRY T. MURDOCK

For suspense which never lags for a moment, for thrills which follow each other like waves, we give you "The Desperate Hours." Joseph Hayes' crisp, efficient dramatization of his novel of the same title.

Within five minutes after the curtain rises at the Locust, the peaceful, comfortable Hilliard in suburban Indianapolis is held in the thrall of evil, and for the rest of the three acts,

struggles and fights—and triumphs—as the audience grows more tense with every twist of the plot.

PLAY IS EFFECTIVE

It is tremendously effective "theater," marked by complete cooperation among its elements—

"THE DESPERATE HOURS" a drama by Joseph Hayes, based on his novel of the same title. Presented by Howard Erskine and Joseph Hayes, directed by Robert Montgomery, setting and lighting by Howard Bay, costumes by Robert Randolph. Presented, prior to Broadway, at the Locust last night with the following cast:

Tom Winston	Judson Pratt
Jesse Bard	James Gregory
Harry Carson	Kendall Clark
Eleanor Hilliard	Nancy Coleman
Ralphie Hilliard	Malcolm Brodrick
Dan Hilliard	Karl Malden
Cindy Hilliard	Patricia Peardon
Glenn Griffin	Paul Newman
Hank Griffin	George Grizzard
Robish	George Mathews
Chuck Wright	Fred Elsley
Mr. Patterson	Wyrley Birch
Miss Swift	Mary Orr
Lt. Carl Fredericks	Rusty Lane

[fol. 486] writer, director, actors and set designer. In fact, the play had to be on the stalwart side to draw attention from Howard Bay's remarkable "breakfront" set showing two stories of the Hilliard home, plus occasional rambles to Indianapolis police headquarters.

This is the story, based on an actual incident, of the three-day terrorization of a family by three escaped convicts, who invade the home to wait for funds first, to accomplish a vengeful scheme on the part of the gang leader, and second, to assure their getaway.

Father, mother, 20-year-old daughter, 9-year-old son take their turn at being hostages, take their turn at rebellion, take their turn in defeat and yet, while police hold off to avoid a slaughter of the innocents, work their way to an exciting solution.

SHOW EVERY TWIST

Those who have read Hayes' book will be doubly appreciative of the manner in which he has wrought it into a play. Every bit of action impossible to show on the stage has been described most graphically; every twist of plot, which can be shown, including the "empty-gun" gambit is presented forcefully.

Several years ago, Robert Montgomery interrupted his screen parade of debonair youths to play in a film that still stands out as a screen terror classic—"Night Must Fall". Montgomery hasn't forgotten how to tighten up an audience's nerves. As director of "The Desperate Hours", he builds up to the final explosion with the sure touch of the thrill expert.

[fol. 487] And while this is all pretty much straight line melodrama, moving swiftly to its climax, there is time for some psychological below-surface characterization, all realized by the excellent cast.

TAKES LONG CHANCE

As the father who faces a situation almost beyond his power to assimilate but who takes the long, courageous chance, Karl Malden gives another of his sure, concise performances. As the young complex-ridden leader of the convicts, Paul Newman creates a mood of insane ruthlessness. While his role is necessarily more limited than in the book, James Gregory plays the deputy sheriff with conviction.

George Grizzard, as the leader's young brother with an abbreviated sense of decency; George Mathews, as the brutish third in the trio; Nancy Coleman, as the wife;

Patricia Peardon, as the firebrand, daughter and Malcolm Brodrick as the boy, all take turns at contributing to the excitement.

[fol. 488]

STIPULATION SETTLING CASE

It Is Hereby Stipulated that the foregoing case contains all of the evidence given upon the trial of the above entitled action and that the said case may be settled and ordered to be filed and attached to the judgment roll.

Dated: New York, N. Y., October 3, 1962.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

ORDER SETTLING CASE

Upon the above stipulation, the foregoing case containing all the evidence is hereby settled and ordered filed.

Dated: New York, N. Y., October 4, 1962.

Arthur G. Klein, J.S.C.

[fol. 489]

STIPULATION WAIVING CERTIFICATION

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing constitute true and correct copies of the notice of appeal, the judgment roll in this action, the judgment appealed from, the case and exceptions as settled, now on file in the Office of the Clerk of the County of New York.

Certification thereof in pursuance of Section 616 of the Civil Practice Act is hereby waived.

Dated: New York, N. Y., October 3, 1962.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to Section 616 of the Civil Practice Act, it is

ORDERED that the foregoing printed record be filed in the Office of the Clerk of the Appellate Division of the Supreme Court in the First Judicial Department.

Dated: New York, N. Y., October 4, 1962.

Arthur G. Klein, J.S.C.

[fol. 491]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 8139/55

JAMES J. HILL, Plaintiff,

—against—

TIME, INC., Defendant.

NOTICE OF APPEAL TO COURT OF APPEALS

Sirs:

Please Take Notice that defendant hereby appeals to the Court of Appeals of the State of New York (a) from the judgment herein in favor of plaintiff entered in the office of the Clerk of the County of New York on the 23rd day of October, 1963, pursuant to the order of modification of

the Appellate Division, First Judicial Department, dated and filed May 14, 1963, and (b) from said order of modification insofar as it affirmed the judgment of the trial court on the issue of liability and failed to dismiss the complaint.

October 29, 1963.

Cravath, Swaine & Moore, Attorneys for Defendant,
1 Chase Manhattan Plaza, New York 5, N. Y.

To:

Mudge, Stern, Baldwin & Todd, Esq., Attorneys for Plaintiff, 20 Broad Street, New York 5, N. Y.

Clerk of the County of New York.

[fol. 492]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JUDGMENT APPEALED FROM

The above-entitled action having regularly come on before Hon. Arthur G. Klein at Special and Trial Term, Part XVI of this Court, a jury having been waived, on the 18th day of October, 1963, for the assessment of damages of plaintiff James J. Hill, pursuant to the order of the Appellate Division, First Department, dated May 14, 1963, and the parties having appeared by their respective attorneys, and said plaintiff having stipulated to rest upon the evidence adduced by him upon the first trial herein as his proof of damages, and after due deliberation, the Court having filed a decision in writing awarding to plaintiff James J. Hill as and for compensatory damages the sum of $30,000.00, without costs, and directing the entry of judgment accordingly, and the action having been severed as to Time, Inc., it is

Adjudged that plaintiff James J. Hill (No. 409 Sound Beach Avenue, Old Greenwich, Connecticut) recover of defendant Time, Inc. (Time & Life Building, Rockefeller Center, New York, New York) the sum of $30,000.00, and that plaintiff James J. Hill have execution therefor.

Judgment signed and entered this 23 day of October, 1963.

[SEAL]

James McGurrin, Clerk.

[fol. 493]

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 14th day of May, 1963.

Present: Hon. Bernard Botein, Presiding Justice. Hon. Benjamin J. Rabin, Hon. Francis L. Valente, Hon. James B. M. McNally, Hon. Harold A. Stevens, Justices.

5753

JAMES J. HILL and
ELIZABETH SELFRIDGE HILL, Plaintiffs-Respondents,

vs.

JOSEPH HAYES, et al., Defendants,

and

TIME, INC., Defendant-Appellant.

ORDER APPEALED FROM

An appeal having been taken to this Court by the defendant-appellant from the judgment of the Supreme Court, New York County, entered on the 21st day of May, 1962,

in favor of plaintiffs and against defendant-appellant in the sum of $176,288.02, and said appeal having been argued [fol. 494] by Mr. Harold R. Medina, Jr., of counsel for the appellant, and by Mr. Leonard Garment, of counsel for the respondent; and due deliberation having been had thereon, and upon the Opinion of this Court filed herein,

It hereby is ordered and adjudged that the judgment so appealed from be and the same is hereby modified, on the law and in the exercise of discretion, and a new trial ordered on the sole issue of damages, and, as so modified, affirmed, without costs to either party. [One of the Justices dissents in part.]

Enter,

Vincent A. Massi, Clerk.

[fol. 495]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

March 1963

Bernard Botein, P. J., Benjamin J. Rabin, Francis L. Valente, James B. M. McNally, Harold A. Stevens, JJ.

Appeal from a judgment of the Supreme Court in favor of plaintiffs, entered May 21, 1962 in New York County, upon a verdict rendered at a Special and Trial Term (Arthur G. Klein, J.) in an action for alleged invasion of right of privacy under section 51 of the New York Civil Rights Law.

Harold R. Medina, Jr., of counsel (*Oliver C. Biddle* and *Alan J. Hruska* with him on the brief; *Cravath, Swaine & Moore*, attorneys), for appellant.

Leonard Garment of counsel (*Donald J. Zoeller* with him on the brief; *Mudge, Stern, Baldwin & Todd*, attorneys), for respondents.

OPINION OF APPELLATE DIVISION—May 14, 1963

STEVENS, J. This is an appeal from a judgment entered after a jury trial which resulted in a verdict for the plaintiffs. The action is one for damages based on a violation [fol. 496] of plaintiffs' right of privacy under section 51 of the Civil Rights Law. This section, in pertinent part, provides:

> "Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action . . . to prevent and restrain the use . . . and may also sue and recover damages for any injuries sustained."

On September 11, 1952, the plaintiffs and their children were held captive in their own home in Whitemarsh, Pennsylvania, for 19 hours by three escaped convicts. Sometime in the early morning of September 12, 1952, the convicts departed, leaving plaintiffs and their family unharmed. The incident received wide publicity at the time and was given extensive press coverage. Plaintiff James J. Hill, in a statement given to the press almost immediately after the occurrence, stated the family had not been molested or harmed and, save for the restraint, had been treated courteously.

Plaintiffs sought to forget their ordeal, and a few months later plaintiffs and their family moved to Old Greenwich, Connecticut. The move, a result of job promotion, was accelerated because of the September, 1952 incident. Opportunities to capitalize on the occurrence were rejected. The record reveals plaintiffs' refusals in an attempt to avoid further publicity for the sake of their children.

In the Spring of 1953, a book, "The Desperate Hours", was written by Joseph Hayes, which was later made into a play and also a picture bearing the same title. The story [fol. 497] dealt with three escaped convicts holding a family

as hostages in their suburban home. Some of the members of the family were assaulted, profanity was used and in other ways the story differed from the account given by Hill of what had occurred in their home.

In 1954, the play opened for a tryout in Philadelphia, Pennsylvania. Following conferences with the producer, *Life* magazine decided to do an article on the play. Thereafter *Life* arranged to have the Whitemarsh home made available for photo coverage, and chiefly at its own expense transported members of the cast to the house where it shot actual scenes from the play. It must be remembered this was the house where the real Hill incident occurred. In connection with and accompanying the article *Life* featured these scenes. The article, which appeared in *Life's* February 28, 1955, issue under a heading "True Crime Inspires Tense Play", read, in part, as follows: "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel THE DESPERATE HOURS, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off."

Thereafter plaintiffs instituted suit. It is from a judgment in their favor that this appeal is taken.

The right of privacy is purely statutory (*Gautier* v. *Pro-Football, Inc.*, 304 N. Y. 354, 358). The section is designed "to prevent the use of an individual's name for commercial purposes without his consent" (*Orsini* v. *Eastern Wine Corp.*, 190 Misc. 235, 236). It is immaterial whether the use by defendants of the name holds the party up to ridi- [fol. 498] cule or contempt since the action is not one for libel (*Binns* v. *Vitagraph Co. of America*, 210 N. Y. 51, 54; *Callas* v. *Whisper, Inc.*, 198 Misc. 829, 831).

"The test for legally protected privacy may involve either the decency of the public interest in the events in-

volved or the fame or notoriety of the person asserting his privacy interest or both" (1 Harper and James, Torts, § 9.7, p. 687). So too "either or both of two factors may be involved in justifying a breach of the seal of privacy; the propriety of public information as newsworthy, in the light of the habits, customs and values of our society and the extent to which the plaintiff, either by his voluntary conduct or because it was thrust upon him, has achieved the position of a 'public figure' and thus become newsworthy" (*ibid.*, pp. 686-687). New York also requires that the use of the name, etc., be for advertising purposes or for the purposes of trade. For the right protected is the right to be protected against the commercial exploitation of one's personality without his written consent (Civil Rights Law, § 51).

In September, 1952, when the incident occurred, plaintiffs were projected unwillingly into the limelight and, under the test enunciated, had no legally protected privacy so far as legitimate, accurate reporting and fair comment were concerned. They were newsworthy. The passage of time tended to dim the public interest both because of other events, actually or apparently of greater public interest or significance, and because plaintiffs themselves avoided capitalizing on the occurrence. In other words, the occurrence had been relegated to the outer fringe of the public consciousness.

When the defendant, in its article of February 28, 1955, revived or intensified interest in the ordeal which plain-
[fol. 499] tiffs had experienced, the use of plaintiffs' name was primary and not merely incidental to the article (cf. *Wallach* v. *Bacharach,* 192 Misc. 979, affd 274 App. Div. 919). Although the play was fictionalized, *Life's* article portrayed it as a re-enactment of the Hills' experience. It is an inescapable conclusion that this was done to advertise and attract further attention to the play, and to increase present and future magazine circulation as well. It is evident that the article cannot be characterized as a mere dis-

semination of news, nor even an effort to supply legitimate newsworthy information in which the public had, or might have a proper interest.

Hayes, the author of the play "The Desperate Hours", in an article which appeared January 30, 1955, in *The New York Times,* had stated the play was fictionalized. This article was available to, and, in fact apparently in the possession of the defendant when its publication of February 28, 1955, appeared. Defendant did not seek to ascertain from Hayes if his play was an account of what happened to the Hills. Defendant merely concluded that basically the play was a re-enactment and so stated. The contention of defendant that it found points of similarity in the book and the occurrence of September 11, 1952, justified neither the identification nor the commercial exploitation of plaintiffs' name and family with the play.

While there is sufficient evidence to support a jury verdict on the question of liability, prejudicial error was committed which undoubtedly influenced, improperly, the jury's determination as to the quantum of damages. Accordingly, a retrial is directed, limited solely to that question.

Since a retrial is being directed on the sole issue of damages, certain matters may be adverted to for the guidance [fol. 500] of the parties. The admission into evidence and viewing of the film by the jury constituted substantial prejudicial error. The film was released almost one year after the article appeared, and subsequent to the institution of the suit. The emotional impact of viewing a highly charged, tense, dramatic film portrayal of incidents of the nature here involved, with accompanying sound effects, was inflammatory and undoubtedly served to influence the jury improperly. Because of the remoteness in time it is doubtful that much, if any, of the public recalled the article or were significantly influenced by it. Elements and factors were introduced by the showing of the film for which defendant should not fairly be held responsible.

The plaintiff James J. Hill was permitted to testify in broad general terms about comments and questions directed to him by various persons, not otherwise identified, concern-

ing his connection with or relation to the characters portrayed in "The Desperate Hours", and their reaction to his responses. The incidents were not specifically related or, as pointed out, the persons identified. This was error. Defendant could neither disprove the assertions by calling such persons nor could it cross-examine the alleged speakers. "The better practice would be to call as witnesses for plaintiff, subject to cross-examination, the persons who were supposed to have spoken or acted adversely to plaintiff and to demonstrate, if such demonstration be possible, a connection to the libel" (*Macy* v. *New York World-Tel. Corp.*, 2 N Y 2d 416, 422). It is true the observation quoted was made in a libel case. However, it is equally applicable in a case of this nature because of the evil it is designed to prevent. It is the fact of wrongful intrusion on privacy and the state of mind and effect on the Hills which is im-[fol. 501] portant. For the right sought to be protected by statute is the right to be left alone.

Equally improper is it to place into evidence articles which appeared subsequently when no direct causal connection to the offending article is shown either by competent supporting testimony, or by some proof of identity of language sufficient to permit, if not compel, an inference of causal relationship. Defendant is thus charged with the transgressions of others, if such there were, without any proof of its responsibility therefor.

We find the verdicts grossly excessive. In passing it might be noted the briefs are inordinately and unjustifiably lengthy, and no costs are awarded.

The judgment appealed from should be modified on the law and in the exercise of discretion, and a new trial directed on the sole issue of damages. As so modified, the judgment appealed from should be otherwise affirmed, without costs to either party.

Rabin, J. (concurring). The use of the "name, portrait or picture of a living person in truthfully recounting or portraying an actual current event" is not proscribed by

section 51 of the Civil Rights Law (*Binns* v. *Vitagraph Co. of America,* 210 N. Y. 51, 56). The same is true with reference to a past newsworthy event if it bears some relationship to the current event portrayed. The difficulty with the position of the defendant *Time* is that it portrayed the previous Hill incident in a highly sensational manner and represented that the play was a true version of that event. It was not. It was fictionalized and the jury so found. Consequently it violated section 51 of the Civil Rights Law (see *Gautier* v. *Pro-Football, Inc.,* 278 App. Div. 431, 435; *Molony* v. *Boy Comics Publishers,* 277 App. Div. 166, 169; *Lahiri* v. *Daily Mirror,* 162 Misc. 776.

[fol. 502] Properly presented, the Hill incident could have been referred to in the article reviewing the play without subjecting the defendant to liability despite the fact that to do so would constitute an invasion of the Hills' privacy and might cause them grief and distress. The right of privacy must give way to the public interest in having newsworthy material disseminated albeit the presentation of such newsworthy material increases the publisher's circulation and a trade benefit flows therefrom (see *Gautier* v. *Pro-Football, Inc., supra,* p. 435; *Thompson* v. *Close-up, Inc.,* 277 App. Div. 848).

However, if it can be clearly demonstrated that the newsworthy item is presented, not for the purpose of disseminating news, but rather for the sole purpose of increasing circulation, then the rationale for exemption from section 51 no longer exists and the exemption should not apply. In such circumstance the privilege to use one's name should not be granted even though a true account of the event be given—let alone when the account is sensationalized and fictionalized. Such a rule would accomplish the purpose sought to be achieved by the section and furthers the attempt to curb the evils these sections seek to avoid (see Warren and Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193 [1890]; *Roberson* v. *Rochester Folding Box Co.,* 171 N. Y. 538; *Lahiri* v. *Daily Mirror,* 162 Misc. 776, *supra*).

This concept is not unusual or foreign to our law. It is analogous to the theory upon which liability is imposed in defamation actions upon a defendant who asserts a qualified privilege. Such privilege is held to be no defense where it is demonstrated that the defamatory material was published with malice. Thus, in this case the defense that the article treats with a newsworthy event is to no avail if it [fol. 503] was published, not for the purpose of disseminating news but rather for the sole purpose of enhancing appellant's sales of its magazine. The record in this case permits of such a finding and such a finding would be well supported by the evidence. It is quite obvious that the reference to the Hill incident was not incidental to the review of the play. It would seem that the converse is true and it is quite apparent that its portrayal in such a sensational and fictional manner was not for its newsworthy content but for the purpose of trade.

Botein, P. J. (dissenting in part). The article complained of was a report upon a new play, traditionally a newsworthy subject, and one that may be reported by "pictorial reproductions of scenes therefrom" (see *Gautier* v. *Pro-Football, Inc.*, 278 App. Div. 431, 437, affd. 304 N. Y. 354). To point out, in an article of that nature, a relation between the play and the concededly newsworthy incident in which plaintiffs had been involved creates no cause of action in their favor under section 51 of the Civil Rights Law unless they can show that the incident "has so tenuous a connection with the news item or educational article that it can be said to have no legitimate relationship to it" (*Lahiri* v. *Daily Mirror, Inc.*, 162 Misc. 776, 782, Shientag, J.; and see, also, *Dallesandro* v. *Holt & Co.*, 4 A D 2d 470, 471). This cannot be said here. As plaintiffs had been held prisoners in their home by escaped convicts, with consequent widespread publicity, and as such an occurrence formed the basic theme of the play, which was news in itself, obviously references to this common feature in the report of the play were of "some relevance to the reporting

of news" (*Gautier* v. *Pro-Football, Inc.*, 278 App. Div. 431, [fol. 504] 435, *supra*). Such relevance was confirmed by the admission of the playwright—a witness called by plaintiffs—that "the Hill incident—unconsciously—triggered the book [which he had written and from which he contrived the play] in a very direct way".

Overstrained, in my view, is the court's conception of the article as a fictional recreation of the Whitemarsh incident. Had a review of the play in a daily newspaper summarized some of the scenes and then stated that the play was inspired by the Hills' misadventure, I question that section 51 would have been considered applicable. Yet that is the tenor of the instant article, except that the scenes were depicted by pictures instead of words, a permissible substitution as above stated. To be sure, a searching eye can detect elements of inaccuracy or exaggeration in the article. By taking the pictures in the Whitemarsh house, as well as by words, defendant indicated that the incident there inspired the play. Though the incident happened in September, 1952 and the novel on which the play was based was written the following Spring, perhaps it is an overdrawn inference from their common features above mentioned that the one inspired the other; and perhaps it is erroneous to say that an occurrence is the inspiration of a work when it is only the unconscious trigger. Perhaps the word "story" in the last sentence of the excerpt quoted in the majority opinion can be construed as a reference to the Whitemarsh incident rather than to the word "novel" in the preceding sentence. But, especially when it is recalled that "[t]ruth or falsity does not, of itself, determine whether the publication comes within the ban of sections 50 and 51" (*Koussevitzky* v. *Allen, Towne & Heath*, 188 Misc. 479, 484, SHIENTAG, J., affd. 272 App. Div. 759), can it be said that such flaws are of so extravagant a nature as to convert into fiction an informative presentation of [fol. 505] legitimate news? In my opinion not; we are in a domain where "the lines may not be drawn so tight as to imperil more than we protect" (*Oma* v. *Hillman Periodi-*

cals, 281 App. Div. 240, 245; cf. *D'Altomonte* v. *New York Herald Co.,* 154 App. Div. 453, mod. 208 N. Y. 596; *Goelet* v. *Confidential, Inc.,* 5 A D 2d 226).

To hold, as suggested in the concurring opinion, that a violation of section 51 may be established by a showing that a newsworthy item has been published solely to increase circulation injects an unrealistic ingredient in the complex of the right to privacy, and would abridge dangerously the people's right to know. In the final analysis, the reading public, not the publisher, determines what is newsworthy, and what is newsworthy will perforce tend to increase circulation.

I would dismiss the complaint.

VALENTE and MCNALLY, JJ., concur with STEVENS, J.; RABIN, J., concurs in opinion; BOTEIN, P. J., dissents in part in opinion.

Judgment modified on the law and in the exercise of discretion, and a new trial directed on the sole issue of damages. As so modified, the judgment appealed from is otherwise affirmed, without costs to either party.

[fol. 506]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

SPECIAL & TRIAL TERM—PART XVI

JAMES J. HILL, Plaintiff,

—against—

TIME, INC., Defendant.

October 18, 1963

Before:

The Hon. Arthur G. Klein, Justice.

Appearance:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for Plaintiff, 20 Broad Street, New York, N. Y., By: Leonard Garment, Esq., of Counsel.

Cravath, Swaine & Moore, Esqs., Attorneys for Defendant, 1 Chase Manhattan Plaza, New York, N. Y., By: Harold R. Medina, Jr., Esq., of Counsel.

Irving Levine, C. S. R., Official Court Reporter.

TRANSCRIPT OF PROCEEDINGS ON ASSESSMENT DAMAGES

[fol. 507] The Clerk: The jury waived and formal findings and conclusions are waived?

Mr. Garment: Yes.

Mr. Medina: Yes.

Mr. Garment: I will state for the record, if your Honor please, that we, representing the Plaintiff, James J. Hill, have stipulated that the Court shall fix the amount of damages without a jury and I further represent to the Court that we are not able to produce in support of the claim of compensatory damage any evidence in addition to

such evidence as was adduced by us at the first trial which was conducted before your Honor on the issue of damages, and I therefore rest upon the proof of damages at the first trial.

Mr. Medina: I also stipulate that the jury be waived and that the Court may fix the amount of damages.

The Court: The amount of damages is set at $30,000.

Mr. Garment: That is compensatory damages, your Honor?

The Court: Only compensatory damages. Without costs.

Mr. Medina: I, of course, object to the award of any damages on the ground that there is no cause of action shown and also on the further ground if the statute be so construed as to permit the award of damages, the statute is unconstitutional under the free press provisions of the federal and state constitutions.

The Court: That is the same position that you took at the trial, the original trial.

Mr. Medina: Precisely, your Honor.

The Court: The Appellate Division has already ruled on that and I assume the Court of Appeals will rule.

Mr. Medina: I am just stating that for the record for any further appeal.

* * * * * * *

[fol. 508]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

DECISION ON ASSESSMENT OF DAMAGES

KLEIN, J.:

The assessment of damages of plaintiff James J. Hill, pursuant to the order of the Appellate Division, First Department, dated May 14, 1963, having come on before Hon. Arthur G. Klein at Special and Trial Term, Part XVI, of this Court on the 18th day of October, 1963, and the parties having stipulated that the Court shall fix the

amount of damages without a jury, and said plaintiff having represented to the Court that he is not able to produce in support of compensatory damages any evidence in addition to that adduced by him upon the first trial as proof of such damages and, therefore, rests upon such evidence as his proof of damages, and having so stipulated, and after hearing counsel, and after due consideration, the Court finds and concludes that said plaintiff James J. Hill should be awarded as and for compensatory damages the sum of $30,000.00 and that judgment for that amount, without costs, is directed to be entered in his favor.

October 18, 1963.

AGK
J.S.C.
(Arthur G. Klein)

Filed Oct. 18, 1963, New York County Clerk's Office.

[fol. 509]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

JAMES J. HILL, Plaintiff-Respondent,

—against—

TIME, INC., Defendant-Appellant.

STIPULATION DISPENSING WITH PRINTING OF CERTAIN EXHIBITS

It Is Hereby Stipulated that the printing of the following exhibits introduced and admitted into evidence at the trial of this action and constituting a part of the Record on Appeal herein be dispensed with and that copies thereof be submitted to this Court prior to the argument, viz.:

PLAINTIFFS' EXHIBITS

3 Clippings from the September 22, 1952, issue of the Philadelphia Daily News.

4A Clippings from the September 22, 1952, issue of the Conshohocken Recorder.

10 Article appearing at pages 75, 76 and 78 of the February 28, 1955, issue of LIFE magazine entitled "True Crime Inspires Tense Play".

15 Samuel French edition of "The Desperate Hours, A Play".

25 Envelope marked "Laura Ecker" with newspaper clippings, as follows:

[fol. 510] (1) Theatre review entitled "Fiction Out Of Fact" by Joseph Hayes, stamped Jan. 30, 1955.

(2) Theater review entitled "'Desperate Hours' Proves To Be Bang-Bang Hit" by Robert Coleman, stamped Feb. 1, 1955.

(3) Theater review entitled "Theater: The Guests From Jail" by Brooks Atkinson, stamped Feb. 11, 1955.

(4) Theater review entitled "Arrival Of An Excellent Thriller" by Richard Watts, Jr., stamped Feb. 11, 1955.

(5) Theater review entitled "'The Desperate Hours': Drama Real Gun-Happy" by John McClain, stamped Feb. 11, 1955.

(6) Theater review entitled "'The Desperate Hours' A Sizzling Melodrama By A Red-Hot Cast" by John Chapman, stamped Feb. 11, 1955.

(7) Theater review entitled "'Desperate Hours' Set Delivers A Tingle" by William Hawkins, stamped Feb. 11, 1955.

(8) Theater review entitled "'The Desperate Hours'" by Walter F. Kerr, stamped Feb. 11, 1955.

(9) Theater review entitled "Exciting Melodrama" by Richard Cooke, stamped Feb. 14, 1955.

[fol. 511] 26 Article appearing at pages 31-35 of the February 14, 1955, issue of LIFE magazine entitled "Is This Princess Alive?".

27 Article appearing at pages 97, 98 and 100 of the November 24, 1947, issue of LIFE magazine entitled "The Case Of The Winslow Boy".

28 Article appearing at pages 61 and 62 of the December 31, 1945, issue of LIFE magazine entitled "They Were Expendable".

30 Article appearing at pages 60, 62 and 64 of the April 13, 1959, issue of LIFE magazine entitled "A Famous Case Retried".

DEFENDANTS' EXHIBITS

C Photostatic copy of pages 1 and 2 of the September 13, 1952, issue of The New York Herald Tribune, Late City Edition.

D Photostatic copies of pages from six newspaper issues, as follows:

(1) Pages 1 and 2 of the September 12, 1952, issue of the Philadelphia Evening Bulletin, Sports Four-Star Final Edition.

(2) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Inquirer, Final City Edition.

(3) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Evening Bulletin, Night Extra Edition.

[fol. 512] (4) Pages 1 and 3 of the September 14, 1952, issue of the Philadelphia Sun Bulletin, Three-Star Edition.

(5) Pages 1 and 4 of the September 15, 1952, issue of the Conshohocken Recorder.

(6) Pages 1 and 20 of the September 22, 1952, edition of The New York Times, Late City Edition.

E Photographic copy of pages 1 and 8 of the November 20, 1952, issue of the Conshohocken Recorder.

F Photographic copy of page 1 of the November 25, 1952, issue of the Conshohocken Recorder.

It Is Further Stipulated that the above documentary evidence may be referred to by the parties in the briefs and upon the argument in this Court, with the same force and effect as if the same had been printed in full in the Record on Appeal.

April 30, 1964.

Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff-Respondent.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

[fol. 513]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

JAMES J. HILL, Plaintiff-Respondent,

—against—

TIME, INC., Defendant-Appellant.

STIPULATION WAIVING CERTIFICATION

It is Hereby Stipulated that the foregoing consists of a true and correct copy of the Record on Appeal to the Appellate Division, First Department, the Notice of Appeal to the Court of Appeals, the judgment appealed from, the order of modification appealed from and the transcript of proceedings and decision on the assessment of damages, all of which are on file in the office of the Clerk of the County of New York, as well as the opinion of the Appellate Division, First Department, the opinion of Rabin J., concurring, and the opinion of Botein P. J., dissenting in part, which are on file in the office of the Clerk of that Court.

Certification of all of the foregoing papers is hereby waived.

April 30, 1964.

Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff-Respondent.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

[fol. 514]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Certificate No. 125

JAMES J. HILL, Plaintiff,

against

TIME, INC., Defendant.

CERTIFICATE OF COMPARISON OF TRANSCRIPT FOR FILING WITH SUPREME COURT OF THE UNITED STATES

New York County Clerk's Index No. 8139 Year 1955

State of New York,
County of New York, ss.:

I, JAMES MCGURRIN, County Clerk and Clerk of the Supreme Court, New York County, Do Hereby Certify that I have compared the foregoing pages 1 to 513 with the original of the papers included therein on file in my office and that they contain true and correct transcripts of the originals and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 21st day of June 1965.

James McGurrin, County Clerk and Clerk of the Supreme Court, New York County.

[fol. 515]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

JAMES J. HILL, Respondent,

v.

JOSEPH HAYES et al., Defendants,

and

TIME, INC., Appellant.

Memorandum Decision of Affirmance—April 15, 1965

Judgment affirmed, with costs, on the majority and concurring opinions at the Appellate Division.

Concur: Chief Judge Desmond and Judges Dye, Van Voorhis, Burke and Scileppi. Judge Fuld dissents in the following opinion in which Judge Bergan concurs.

FULD, J. (dissenting). The article, published (in 1955) by the defendant in its magazine *Life,* on which the plaintiff's cause of action is predicated, read in this way:

"TRUE CRIME INSPIRES TENSE PLAY

"The Ordeal of a Family Trapped by Convicts
Gives Broadway a New Thriller,

'THE DESPERATE HOURS'

"Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel, THE DESPERATE HOURS, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.

> "The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. LIFE photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the site of the crime."

The article also contained photographs of an actual news headline relating to the plaintiff's experience (of three years previously), of the house in which the plaintiff and his family then live and in which they were held captive and of actual stage settings of the play.

[fol. 516] I do not believe that section 51 of the Civil Rights Law may be availed of to create a cause of action against those who published an article reporting a new play, unquestionably a subject worthy of press comment, and pointing out that there was a relationship between the play and an actual event, also concededly newsworthy, in which the plaintiff some years before had been involved. There can be no doubt that the play certainly bore a close and legitimate relationship to the real-life incident as, indeed, the columnar comparison made by the defendant in its brief strikingly reveals. Moreover, the author of the story (Joseph Hayes), called as a witness for the plaintiff, testified that the real-life Hill case "stimulated" and "inspired" his writing of the play, that it "triggered the book in a very direct way" and that the *Life* magazine heading, "True Crime Inspires Tense Play", was "certainly correct, that true crime did inspire my play".

Section 51 of the Civil Rights Law does not, of course, proscribe the use of an individual's name or picture in connection with a news article of general interest. (See, e.g., *Binns* v. *Vitagraph Co.*, 210 N. Y. 51, 56; *Gautier* v. *Pro-Football*, 304 N. Y. 354, affg. 278 App. Div. 431; *Booth* v. *Curtis Pub. Co.*, 11 N. Y. 2d 907, affg. 15 A. D. 2d 343.) [1]

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[1] In the *Gautier* case, the Appellate Division, speaking through SHIENTAG, J., declared (278 App. Div., at p. 435): "Cognizant of

Accordingly, since the experience of the Hill family in 1952 was newsworthy and since there was a substantial relationship between that experience and the play, which was also a matter meriting news coverage, it would seem to follow that the defendant did not, by its article in *Life*, violate or offend against the provisions of the statute. [fol. 517] Three years had elapsed between the Hill incident and the publication of the article. That, however, cannot be said to render the story about the Hill experience stale news, particularly when it was related to the reporting of a current play which, according to its author, was inspired and triggered by the real-life event. And, once it be established that the reported matter is newsworthy, I query whether the fact that the article may also have been intended to advertise or promote the play is, in and of itself, sufficient basis for subjecting the defendant to a cause of action under the provisions of the Civil Rights Law. If the article is of such a nature as not to come within the proscription of section 51—because it is, on its face, an account of newsworthy information—it is not brought within its coverage by virtue of the fact that it may, incidentally, have been written with an eye toward promoting the play or, as is the underlying purpose of every article, in the hope of bolstering the magazine's own appeal and circulation. As Presiding Justice Botein wrote, in dissent below, "To hold * * * that a violation of section 51 may be established by a showing that a newsworthy item has been published solely to increase circulation injects an unrealistic ingredient in the complex of the right to privacy, and would abridge dangerously the people's right to know".

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the overriding social interest in the dissemination of news, an almost absolute privilege has been extended to the use of names and pictures in connection with the reportage of news. * * * Once an item has achieved the status of newsworthiness, it retains that status even when no longer current".

In short, it is my judgment that the plaintiff failed to make out a case and, accordingly, I would reverse the judgment appealed from and dismiss the complaint.

Judgment affirmed, etc.

[fol. 518] Triple Certificate to foregoing paper (omitted in printing).

[fol. 519]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 15th day of April in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness, The Hon. Charles S. Desmond, Chief Judge, Presiding. Raymond J. Cannon, Clerk.

REMITTITUR—April 15, 1965

[fol. 520]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

Sup. Ct. No. 244

JAMES J. HILL, Respondent,

vs.

TIME, INC., Appellant.

Be it Remembered, That on the 10th day of June in the year of our Lord one thousand nine hundred and sixty-four, Time, Inc., the appellant - in this cause, came here unto the Court of Appeals, by Cravath, Swaine & Moore, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Supreme Court, New York County. And James J. Hill, the respondent - in said cause, afterwards appeared in said Court of Appeals by Nixon, Mudge, Rose, Guthrie & Alexander, his attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Court of Appeals having heard this cause argued by Mr. Harold R. Medina, Jr., of counsel for the appellant - , and by Mr. Leonard Garment, of counsel for the respondent - , and after due deliberation had thereon, did order and adjudge that the judgment herein be and the same hereby is affirmed, with costs, on the majority and concurring opinions at the Appellate Division. And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Whether sections 50 and 51 of the Civil Rights Law of the State of New York, as applied to defendant, were invalid under the First and Fourteenth Amendments to the Constitution of the United States. The Court of Appeals held that Sections 50 and 51 of the Civil Rights Law of the State of New York, as so applied, were valid.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

[fol. 521] Therefore, it is considered that the said judgment be affirmed, with costs, etc., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 522]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-seventh day of May A. D. 1965.

Present, Hon. CHARLES S. DESMOND, Chief Judge, presiding.

Mo. No. 536

JAMES J. HILL, Respondent,

vs.

TIME, INC., Appellant.

ORDER AMENDING REMITTITUR—May 27, 1965

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, *viz.*: Whether sections 50 and 51 of the Civil Rights Law of the State of New York, as applied to defendant, were invalid under the First and Fourteenth Amendments to the Constitution of the United States. The Court of Appeals held that sections 50 and 51 of the Civil Rights Law of the State of New York, as so applied, were valid.

And the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 523]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 8139-1955

JAMES J. HILL, Plaintiff,

—against—

TIME, INC., Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 13, 1965

I. Notice is hereby given that Time, Inc., defendant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, entered in the office of its Clerk on April 15, 1965, affirming a judgment of the Supreme Court of the State of New York, County of New York, in favor of plaintiff, entered on October 23, 1964, upon the order of modification of the Appellate Division of the Supreme Court, First Judicial Department, filed May 14, 1963.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in said

transcript the record on appeal in the Court of Appeals of the State of New York.

III. The following question is presented by this appeal:

Whether Sections 50 and 51 of the New York Civil Rights [fol. 524] Law in permitting the award of damages for invasion of privacy upon the facts of this case abridge the freedom of the press guaranteed by the First and Fourteenth Amendments to the Constitution?

July 13, 1965

Cravath, Swaine, & Moore, Attorneys for Defendant,
1 Chase Manhattan Plaza, New York, N. Y. 10005.

To:

Clerk of the Above-Named Court,

Messrs. Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff, 20 Broad Street, New York, N. Y. 10005.

[File endorsement omitted]

[fol. 525]

SUPREME COURT OF THE UNITED STATES

No. 562—October Term, 1965.

TIME, INC., Appellant,

v.

JAMES J. HILL.

ORDER NOTING PROBABLE JURISDICTION—December 6, 1965

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 526]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

SPECIAL AND TRIAL TERM, PART X

CASE AND EXCEPTIONS

New York, N. Y., April 5, 1962

* * * * * * *

[fol. 527] OPENING ADDRESS FOR PLAINTIFFS

Mr. Garment: Ladies and gentlemen of the jury, the law gives me the privilege, as counsel for the plaintiffs, to speak first. I want to make clear to you that what I say to you in the course of my opening statement is not evidence and any comments or statements I may make about the law are in no way controlling. That is the sole province of his Honor. Ultimately, at the end of the case, after the final arguments are made, his Honor will instruct you on the law before you deliberate and render your verdict.

The purpose of the opening statement is to give you a total view of the case. Necessarily a lawsuit comes in in bits and pieces. Witnesses testify about transactions, not necessarily in chronological order. There are interruptions. There are documents offered. There are arguments. At this point I want to give you a total view of what we claim in this case.

Yesterday you heard the lawyers talking about freedom of the press and you heard myself in particular talking about the so-called right of privacy under the law of the State of New York.

I don't know whether any of you jurors have heard of the statute governing the right of privacy in New York. You may have heard about the necessity for consent being [fol. 528] obtained in connection with photographs and reproductions of that character. But there may be a question in your mind today as to what this right of privacy

has to do with the freedom of the press, what line there is between the so-called freedom of the press and the individual's right of privacy. And I want to talk briefly about that.

First of all, where news is concerned—and by news I mean the truthful reporting of current events or events of general information and interest, or where fair comment on that news is concerned, there is no right of privacy.

The press has the right to write about anyone or anything that is newsworthy, and that includes matters ranging from affairs of state to the Twist. It includes gossip columns. The right is available to the New York Times equally as it is to any gossip magazine. The courts will not interfere with questions of taste. That's left—good taste—to the sense of self-restraint of the publication itself, the newspaper or magazine, as the case may be. There is an enormous area in which the press can operate without any restraint except its own inherent sense of what is right and proper and fair. Now, out of that enormous area the law has carved one small area, one small island for the individual, and that's called the right of privacy, and it is embodied in a statute that was enacted by the legislature here in New York, and it is a limited right of the individual as against the freedom of the press.

[fol. 529] But in our view because the right is limited, because that island or that area is so small, it's all the more precious, it's all the more important, it's all the more worth preserving.

Now, what does the law say in general terms? It says that it shall be unlawful for any person, firm or corporation to use someone else's name, portrait or likeness for purposes of trade or advertising without his or her consent in writing. And it also says that anybody who violates the law shall be liable for any injuries that result from the violation of the law; and where the violation is a knowing violation, where it is something other than an accident, the jury shall be empowered to award punitive damages in its discretion.

Now, again, what does trade or advertising purpose mean when you are talking about a newspaper? Obviously, a newspaper is in business. It is in business to sell newspapers. News is part of its business. And the Constitution says that type of business is constitutionally protected. But when a publication goes beyond reporting news and when it uses either its news columns or its advertising space and uses somebody's name or permits somebody's name and private affairs to be used for what is basically a commercial purpose rather than a news purpose, then the law is violated. I think perhaps the best way to explain those words would be to give you an example.

Suppose I were trying a personal injury case in this courthouse and one day I was driving back to my house in Brooklyn, and over the Brooklyn Bridge I had an ac- [fol. 530] cident and I was injured, somebody else was injured, and reporters came and photographed the accident.

Now, that's news. That could be reported everywhere. That could be on the front page of the New York Times. It could be on the front page of the Daily News. It might be ridiculous. There might be no point to what was done. But that would be news, and there is nothing I could do about it. It might be interesting to the reading public as news.

But suppose some time passes and somebody gets the idea of taking that incident as it was reported and preparing an advertisement or a feature article in collaboration with some advertiser who manufactures seat belts, and that the theme of the advertisiment is, "See what happened to this lawyer who didn't practice what he preached? If he had been using 'X' seat belts, then this would never have happened"—telling the story of the accident, reproducing my picture, reproducing the news account.

Now, that would be a commercial use. That would be an advertising use. That would no longer be legitimate dissemination of news. It would go beyond reporting news.

Suppose that same account were dramatized, were fictionalized, were embellished with a lot of matter out of some writer's imagination on a newspaper or in some advertising agency and that was published. If it were fictional, if it were so embellished as to really give you a distorted impression of what actually happened, again, that [fol. 531] would not be news. That would be a commercial use. It would go beyond fair comment on the news.

Well, ladies and gentlemen, in general terms, that's what this case is about. I will try to apply that example as I have given it to you to the facts of this case which I will speak about now briefly.

I want to talk about the facts of this case chronologically. That may not necessarily be the way the evidence comes in, but for purposes of explaining to you the entire case, giving you a total picture, I think that would be the most useful way of doing it.

We start in the year 1946. A young writer, talented, a very competent craftsman, named Joseph Hayes, one of the defendants in this case, became interested in the hostage theme, the idea of ordinary people who are held captive by desperate men, criminals or escaped convicts. And in 1946 he published an article, wrote a story that was published, a fictional story that was published in the Woman's Home Companion involving the hostage theme, involving someone who performed various acts with the knowledge that his son or with the thought that his son was being held as a hostage.

Now, this is a theme that has gone through literature for many years. There have been movies about it. You may remember the movie Blind Alley a few years ago, the play and movie The Petrified Forest; and there were many others involving this idea of people being held hostage. [fol. 532] Mr. Hayes was interested in this idea and in its dramatic possibilities.

Over the years after 1946 there were a number of hostage cases in the news. In 1947 there was one case. In 1948

there was another case. There were cases in every year that followed. In California there were three escaped criminals, convicts, who took over a home and held the people hostage. In Ohio, in Michigan, in New York State there were incidents of desperate men, sometimes three men, sometimes five men, in a couple of cases brothers, who took over homes, farmhouses, held the people captive.

Mr. Hayes was a methodical writer and he kept clippings, research clippings, and as the year went along he evolved gradually the idea for a play or novel involving this theme of people held hostage.

One of the incidents that he knew about was the incident involving the Hills. That had happened in 1952. And he had a clipping about the Hill incident just as he had a clipping about all such other incidents around the country. And there were incidents after the Hill incident. There was one in Pennsylvania, a farmhouse, a family that was held hostage by escaped convicts. In some of the incidents there was violence. In some of the instances there were killings right on the scene of the crime where the people were held hostage.

In any event, in 1953 he wrote and in 1954 he published a novel call The Desperate Hours. It evolved out of all of these various true life incidents. It evolved out of a personal connection.

[fol. 533] Mr. Hayes lived with his family, his young children and his wife, in a suburban house overlooking the Federal Penitentiary at Danbury, Connecticut, and he will tell you—and you will see writings—when he thought about convicts escaping from that penitentiary and taking over his own house. And that was another element along with all the other factors I have spoken about.

Ultimately The Desperate Hours was published. The Desperate Hours was different from all these hostage incidents. It was a very melodramatic, a very exciting, very well put together story about a family held hostage. There were killings. There was violence. There was contempt

by the convicts for the people they were holding hostage. The father went out of the house and performed errands for the convicts knowing that his family was held hostage. The question was whether he would go to the police, whether he would do these errands, try to work the family out of its problem by himself.

There were killings right on the scene, right at the house. There were attempts to escape on the part of the family—completely different from any of these hostage incidents but involving this basic idea of how people might react dramatically if they were held in this kind of an abnormal situation, if they were gripped by fear, if they had concern about their children and their own lives and were pitted against ruthless and desperate men.

Well, that's The Desperate Hours. It came out in 1954. It was a very exciting, very successful book.

[fol. 534] Now we go to the Hills and their incident. In 1952 the Hills were living in a place called White Marsh Township, Pennsylvania. They were living in a converted old farmhouse, a great big place. There was the plaintiff James Hill and the plaintiff Elizabeth Hill and their five children, two teen-age daughters, an 11-year-old boy and two four-year-old twin boys.

On September 11th, for 19 hours, winding up September 12th, the family was held hostage by three men who escaped from Lewisburg Penitentiary. It was a harrowing experience. Most of the time Mrs. Hill was alone in the house with these men. But there was no violence. The men behaved under all the circumstances decently.

There was no profanity; there was no touching of any of the furnishings. There was no contempt for the people of the house. There were no melodramatic incidents. There was no going out of the house. It wasn't anything like The Desperate Hours. Ultimately you will see the motion picture, you will hear the story of the incident, you will be able to determine what relationship there could have been between them. You will be able to see the difference.

Now, when the convicts cleared out, left the house, there was a manhunt for ten days. Ultimately, as you will hear, they were captured. Two of them were killed and a detective was killed. There was a great deal of publicity at the time of the incident. The police came. The press came.

The Hills told the press what happened. They were very concerned about getting the story straight, making clear [fol. 535] that there had been no violence, that there had been no molesting, that there had been no incident or incidents that would affect young children, impressionable children. They turned away from any attempt to make money out of this. The Hills wouldn't permit themselves or their children to be made a spectacle out of. They wouldn't have anything to do with publicity ventures.

They moved. They moved because Mr. Hill's business required him to move. They accelerated the move, in part, by this incident. But, in any event, they moved to Greenwich, Connecticut. And in 1953 it quieted down after a while, comment, questions about this actual incident.

In 1954, the first coincidence. The book came out, The Desperate Hours. People who knew about the real incident asked them about it: Was there some connection? Was this their story? Did they have anything to do with it? The answer was obviously no, they didn't have anything to do with it. I'm sure that throughout the country other people, other families that had been held hostage were similarly questioned and gave similar answers. Well, that died down after a period of time.

Their actual name wasn't used. The name Hilliard was used. That's going to be a feature in this case.

I want to stop just for a brief moment. The defendants will talk a lot about similarities, but I think when the evidence comes in, you will see that one of the most convincing [fol. 536] arguments for the fact that the author did not intend to have this family in mind when he wrote The Desperate Hours was the use of the name Hilliard because no writer would come within a hundred miles of a real life

name when he is writing about a real life theme. But that is for the trial. We will wait and see what the evidence is on the subject.

In any event, the questioning and comment died down. Then the book was converted into a play, and the play was opening, and there was just a little bit of talk about it. There was no great problem there. But even as the Hills were telling people that they had no relationship to The Desperate Hours, that this was not their story, that there had not been any violence, that they had not collaborated with the author, a group of very talented journalists, publicity people, theatrical people, were at work in Philadelphia, undoing everything that this family was trying to do.

What was happening? This is the second coincidence. Luck—that is an important feature in this case—the Hills' bad luck. The play was having its out-of-town trial in Philadelphia. The Hills lived near Philadelphia. Life saw a golden opportunity to tie the two together, to present an interesting, newsy kind of article.

Well, you will hear the details of this in the proof. But what happened was this: A senior editor of Life Magazine with his staff and the various people connected with The Desperate Hours, including the author, got together. Life Magazine went to the house that the Hills had lived in. They paid the people in the house $50 to permit them to [fol. 537] come in and take photographs of scenes from the play in the house where the family had lived. And then they published an article.

Now, keep in mind the background. They published an article saying to 25 million readers and to everybody that knew the Hills, "True crime inspires tense play." A picture of the house, a picture of a cropped headline from the local newspapers, reference to this incident and this incident alone as the inspiration for The Desperate Hours.

Now, we could stop right with the headline, and I say to you that that article was completely false if there wasn't another word. There was no reference to this being the

partial inspiration for it. There was no reference to any other incident or incidents. There was no reference to the thousand and one elements that went into The Desperate Hours.

I say the article was false right at the start, right at the headline. That is what involved the Hills in it, this premise, "True crime," their incident inspired The Desperate Hours.

The article went on. I think we will be able to show to you that Life's idea was they might as well be hung for a sheep as well as a lamb. They were saying this was inspired by the Hill family; they might as well say it was the story of the Hill family; they might as well really have a news article, really give Life impact, drama, vividness.

So the article goes on and says that Americans read about the incident of the Hill family all over the country. Later they read about it in the book inspired by the family's [fol. 538] experience. Now they can see the story reenacted in the play, and next year they will see it in the movie—just as casual as all that.

The Hills were now The Desperate Hours family and they were The Desperate Hours family from that point on and to this day. They were associated with the violence; they were associated with everything that went on in The Desperate Hours because there isn't one legitimate, clear-cut word or phrase of qualification in that article as to the relationship between this family and The Desperate Hours. But, again, that is a matter for the evidence. This is our claim.

Now, why did Life do this? In short, our claim is that they did it for a commercial reason. They did it in order to have a lively article. They did it to make the magazine enjoyable, entertaining, as Mr. Medina said yesterday. That's what they do and look for in every article. And they do it with the greatest skill because they have the best, the finest, the most talented people that money can hire to do this work. And they did it not necessarily to sell more

magazines, but because it fitted in with their policy, to look for an angle, and this was an angle they found.

Now, why did Joseph Hayes do it? That's obvious. He had an important play, he had an important book. It's kind of understandable. This was the absolute pinnacle of publicity that anyone could obtain, coverage in Life Magazine, a magazine that has the power to make or break individuals, individuals in the theatrical field, a magazine that com- [fol. 539] ments influentially on matters of state, a magazine that is read everywhere, that is believed everywhere.

As a matter of fact, the Hills believed this article when it said that The Desperate Hours was inspired by their incident. They took it at its face value, and in their first complaint that you will hear about they said that the author—they assumed that the author must have told Life Magazine that The Desperate Hours was inspired by the Hill incident.

How else could Life publish this? How else could Life say that this was inspired by their incident unless the man who wrote the book told them? And since it was plain that this had been done in collaboration, the actors went out to the house, et cetera; the author must have told them.

Well, after years of digging—and, in a publication case, believe me, you have to dig, because you don't find your witnesses standing around—the fact that was developed was that he never told them that. You wait for the evidence. You will hear how this came about. They knew that it wasn't inspired by this specific incident.

Now, was Mr. Hayes just an innocent bystander? Did he just happen to get caught up in the machinery of publicity? Does he have a legal liability? Does he have a moral liability? I will let you decide that at the end of the case. You will hear all of the evidence. Certainly, he was a secondary, minor figure. His motivation is understandable. His wrong is not necessarily excusable for that reason.

[fol. 540] Now, what do we say about all this in brief? We say that there is no question but that this article was

false from beginning to end in so far as its use of the Hills' name was concerned; that they were dragged back into the public eye as part of a phony news article, that they would not have been in this article but for this device, and that it was a use for commercial purposes and for advertising purposes.

Now, what happened to the Hills? What is our claim about that? It's hard to put into words what can happen to people when they get into the meat grinder of national publicity. The people that write for magazines and newspapers—maybe you and myself in a sense tend to think of these things as fixed pictures. You look at a magazine once and that's it—when it doesn't involve you. You look at an article in a newspaper and that's it. And I think that's the way people who publish newspapers and magazines frequently think. Out of sight, out of mind.

But these people, the Hill people, from the time the Life article was published right through the run of the book, the run of the play, the run of the movie were The Desperate Hours family. They were cheapened by it in their community. They were subjected to comment and questioning. Fact became fiction and fiction became fact. What happened to the girls? Had you told us the right story before? How could Life say something like this unless it were true? You mean to say that you didn't have anything to do with this article? You didn't sell the story to Hayes? You didn't collaborate?

[fol. 541] And, worst of all to the mother, who spent the major part of the time in real life with the convicts, in the presence of fear—and you will have to think about that personally; try to put yourself in her place, with five kids in the house—in her case, time and time again, there was forcibly brought back to her mind the incident of 1952 and what might have been.

And in The Desperate Hours what might have been became virtually a fact. All of the violence that was below the surface in real life became a fact in The Desperate Hours.

Now, I told you yesterday that Mrs. Hill wasn't a well woman when the Life article came out, and you will hear the evidence about that. She had an active, busy life. She had five children. She had been through this experience. She had her problems. She was in her middle forties. But she was functioning. She was not disabled.

The Life article, we say, and the aftermath of that Life article crippled this woman. It struck a blow at the heart of this family. Wait to see what publicity can do to a family.

What are we asking for? We are asking for compensation. I don't know how you are ultimately going to be able measure that—compensation for the actual anguish, the suffering, the cheapening of these people, the exposure to this kind of comment, talk, having their efforts of two and a half or three years put to naught, their efforts to put this behind them, their efforts to have their children forget about it, their efforts to try to forget it, their efforts to [fol. 542] have people stop insinuating something went wrong there.

What their feelings were you will have to draw from your own experience, your own feelings; you will have to put yourselves in their places. You will have to see how you would have felt.

In Mrs. Hill's case there will be medical evidence of how it affected her, and I ask you to wait until all the evidence is in to evaluate the role that this identification in this Life article had in her illness.

We are also asking for punitive damages, exemplary damages, as it is described in the statute, the idea of the statute being that the jury should have the power under given circumstances to make an example, to deter, to punish where the facts require it. Well, you will hear the evidence on that.

This was not haphazard, this was not accidental. This was deliberate. The Life people knew what they were doing. We do not and will not claim that it was done out of

anger or spite or malice towards the Hills. If there were any such human emotion involved, that would be a circumstance that you could take into consideration. So far as Life Magazine was concerned, so far as all of the people connected with this publicity stunt were concerned, the Hill family did not exist.

We will be asking for punitive damages for their callous, reckless, total indifference to the rights and feelings of a group of human beings.

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[fol. 543]

OPENING ADDRESS FOR DEFENDENT TIME, INC.

Mr. Medina: With your Honor's permission, ladies and gentlemen.

One of the most difficult things to contend with both here in court and outside, I guess, is the big lie technique.

If a fellow says often enough and earnestly enough they lied, had bad faith, didn't do things correctly, after a while you are going to say, "Gee, there must be something to it."

And that is precisely what you are faced with here, because the direct charge is made that we published a false article, that we knew it was false, and we were trying to sell tickets to the play rather than to report upon a newsworthy event in the entertainment field. And that is the crux of the case.

It is a serious case to us because it is a direct attack upon our integrity. It is also a serious case to Tom Prideaux, because if he did what these plaintiffs say he did he is [fol. 544] guilty of a criminal offense and he certainly shouldn't be in our employ any more.

So that from our point of view we assume responsibility for this article, and we are indeed earnest when we say we think we are right.

Now, what did we do? The novel The Desperate Hours was a best seller. It had been made into a movie which was being withheld while a Broadway play was prepared.

Certainly, if there ever was a newsworthy event in the entertainment field, this was it, to report on the opening of a Broadway play, and moreover a Broadway play which was based upon a best seller and which had been already made into a motion picture.

And that is all we did. We had an article with a great big headline on it, "True Crime Inspires Tense Play."

And the first issue that you are going to have to pass upon is as to whether the crime did inspire the play, because these plaintiffs here have to show three things if they are going to recover—and I don't think any of those three things will be shown.

First, that the play wasn't inspired by the crime; secondly, and of equal importance, that we knew it wasn't inspired by the crime; thirdly, and of equal importance, that we, knowing that this was false, went out wantonly, for the purpose of advertising the play and not to report upon a newsworthy event, and therefore lost the normal privilege of reporting on news.

[fol. 545] So that those three elements—I want you to keep your eye on the ball here especially when you have this big lie technique thrown at you: Was it inspired? Did we know whether or not it was inspired? Were we acting in good faith? And what was our motive in publishing the story?

I may also add that even if it wasn't inspired, if there was a connection between the two and we in good faith believed it, we are entitled to publish this article.

Now let me give you a little background. There are just three dates that you have to remember in this case—four, I guess. One is September, 1952, when the convicts came into the Hill home. Next is the spring of 1953, when Mr. Hayes wrote his novel, a few months after the September 1952 incident.

Then a year rolls around to the summer of 1954, and Mr. Hayes wrote the play. And finally, in February of 1955, the play opens and we wrote the article about it.

So it is in September 1952, the incident; the spring of 1953, the book was written; the summer of 1954, the play was written; and February 1955, we did the review of it.

Now, what happened back in September, 1952? Mr. Hill and his wife, in their mid-forties, with a teen-age daughter, a son aged 10, and two young children lived in a suburban home outside Philadelphia. It was in mid-September.

Mr. Hill and the daughter left for work, and at 8:30 in the morning three convicts appeared—not one, not two, not four, not five—three. Two of the convicts were broth- [fol. 546] ers. They came into house, and as Mr. Hill and the daughter returned later that day, they were captured. The convicts stayed in the home 19 hours. The family was unharmed and the convicts left around 3 o'clock in the morning.

Shortly thereafter, Mr. Hill went out on his front porch, where many newsmen were gathered with a microphone, and issued a statement as to what had occurred in that house. This is Mr. Hill himself, not our doing.

That statement was in substance reported in papers throughout the country, including front-page stories in the New York Times and the New York Herald-Tribune, which we would have for you.

Mr. Hayes read the reports in the New York papers and took the clipping—and mind you, this is September, 1952—and he goes off, and in the spring of 1953 he produces a novel, and the plot is laid in the fall in a suburban house with a family in their mid-forties, with a 17-year-old daughter, with a 10-year-old son. And the name of the family is not Hill, it is Hilliard.

And at 8:30 in the morning, the precise hour that the convicts had arrived in the original incident—and which you will see in the newspaper account which came from Mr. Hill himself—at 8:30 in the morning three—not one, not two, not four—three convicts arrived, two of them brothers, and they arrived after the father and the daughter had left the house, just as in the real life incident; and they

stayed in the home and they captured the father and the [fol. 547] daughter as they came back in the afternoon, just as in the real life incident; and the family was unharmed and the convicts left in the middle of the night.

Every single item in The Desperate Hours, except for the actual incidents in the house, came from the New York Times, which came from Mr. Hill's own lips.

And I say to you that when you put those together it is an inescapable conclusion that the true crime did inspire that play, and there is no other conclusion possible.

Certain it is that was the conclusion that we reached and which we had been told and which was affirmed by Mr. Hayes, because he said that the play had been based upon an incident.

And when we went down and took our photographs, Mr. Hayes was present. He never said we were wrong in going into this Philadelphia house; that it had nothing to do with his play.

So we were acting in perfectly good faith in coming out with an article on this newsworthy event in the present, the play, and the newsworthy event in the past, the crime, which was a matter of interest to the public, and that is all we did was to put those together, something that Hill's friends and family had for some months put together.

When the novel came out, all their friends assumed it was their story. Indeed, in three sworn complaints prior to the present complaint, Mr. and Mrs. Hill swore that the play was based on their story.

[fol. 548] Now for their own best reasons they want to come in and say the play wasn't based on the story, ergo, you, Life, lied.

And I say to you that we didn't lie, that we acted in good faith, that we reported a newsworthy event, and that we and Mr. Prideaux are entitled to be cleared of these lies against us.

Thank you.

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[fol. 549] April 11, 1962

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KATHLEEN ST. JOHN, 6 Keofferan Road, Old Greenwich, Connecticut, called as a witness on behalf of the plaintiffs, [fol. 550] being first duly sworn, testified as follows:

Direct examination.

By Mr. Zoeller:

Q. Mrs. St. John, I will ask you to speak out very loudly and actually call out to me so all the members of the jury can hear all of your answers. Do you know the plaintiffs in this action, Mr. and Mrs. Hill?

A. Yes, I do.

Q. You are Mrs. Hill's next door neighbor, are you not?

A. Yes.

Q. When did you first meet the plaintiffs?

A. I met Mrs. Hill about two weeks after she moved to Old Greenwich, to a house right next door to mine.

Q. Did you meet Mr. Hill shortly thereafter?

A. Yes, perhaps a week or so.

Q. During that time or following the time that you first met Mrs. Hill, did you see her from time to time during the following year?

A. Yes, I did. We became acquainted quite rapidly and we visited back and forth often. We became quite good friends.

Q. When you say often, would you give the jury an approximation of how frequently you would see Mrs. Hill?

A. Well, almost daily.

Q. And did you and she also belong jointly to any social or community organizations?

A. Well, not immediately, but about two years later, when her twins and my boy started in first grade, we were able to have definite times together; so we had a sewing group that met every Tuesday in the afternoon.

[fol. 551] Q. Could you indicate to me approximately the year that Mrs. Hill first became a member of this sewing group?

A. 1954.

Q. Approximately when in 1954 would this be, Mrs. St. John?

A. Well, in the fall, after school opened, after Labor Day.

Q. And during the remainder of the year 1954, did Mrs. Hill attend regularly the meetings of this sewing group?

A. Yes, indeed.

Q. Were there certain social functions that arose out of the sewing group?

A. Yes. It became the focal point for most of our activities, this group of twelve women, and then their husbands.

Q. So that not only the women were friends but the husbands were friends and you would meet from time to time; is that right?

A. Yes.

Q. Now, would you describe Mrs. Hill as you first knew her, when she first moved to Old Greenwich, Connecticut in late 1952?

Mr. Medina: Your Honor, I assume I have a continuing objection to this entire line of testimony on the ground that no foundation has been laid for it by proof of use of the name or photograph of Mrs. Hill.

The Court: I might say to you, Counsel, that the Court has come to the decision that Mrs. Hill is a proper plaintiff in this case. I will elaborate upon my reasons in the absence of this jury. I am going to permit it, if that is the basis of your objection.

Mr. Medina: Then I assume I may have a continuing objection throughout the remainder of the trial.

The Court: Yes.

[fol. 552] By Mr. Zoeller:

Q. I asked you if you could describe to the jury Mrs. Elizabeth Hill as you first knew her in late 1952.

A. Well, I was immediately attracted to Mrs. Hill because she was—

The Court: Mrs. St. John, would you mind sitting back, please, and keep your voice up. I am having some difficulty in hearing you.

A. (Continuing) She was a most attractive person and you really warmed to her immediately because she was so gay and vivacious and full of life. She had a great zest for everything, and I had to admire her, too, for the fact that she ran this large home and a large family with such efficiency and with such devotion. She was a most delightful neighbor, wonderful.

Q. Mrs. St. John, through the year 1953 did Mrs. Hill remain as you have just described her now?

A. Yes.

Q. Did she remain the same during the year 1954?

A. Yes.

Q. Did there come a time, Mrs. St. John, when you first noticed a change in Mrs. Hill's condition?

A. In the summer of 1955 she became other than she was when I met her.

Q. Now, let me just ask you, prior to the summer of 1955, do you recall an incident that occurred on or about February 25, 1955 involving Mrs. Hill and yourself?

A. Yes. On the 22nd of February?

[fol. 553] Q. Well, whatever the date. Will you describe what occurred.

A. I was together with Mrs. Kirk and Mrs. Hill for an afternoon. We took a walk and came back to Mrs. Kirk's home for tea. While we were there we examined a copy of Life Magazine that had appeared in the mail that day.

Mr. Medina: May the witness be cautioned not to give us any conversations or statements by Mrs. Hill?

The Court: Just tell us what happened, but don't tell us what anybody said.

The Witness: Yes.

Q. Mrs. St. John, I show you a copy of Plaintiffs' Exhibit 10 in evidence and I refer specifically to page 75 and the two pages following that, and I ask you if that is the copy of Life Magazine that you have reference to.

A. Yes, this is the copy.

Q. Did you and Mrs. Hill and Mrs. Kirk read those three pages together?

A. Yes, we did.

Q. Now, would you describe Mrs. Hill's reaction, bearing in mind the Judge's admonition about not going into anything she said, but would describe Mrs. Hill's reaction when she read that article?

A. She was very much upset by seeing the article. She was very much disturbed by it.

Q. Now, you have stated that there came a time in the summer of 1955 when you noticed a change in Mrs. Hill's condition. Would you describe what that was that you noticed?

[fol. 554] A. Mrs. Hill began to show signs of periods of depression and she changed from the vital, vivacious person that I had known over the past two or three years to someone who at times became very much withdrawn and very lacking in self-confidence and unable to enjoy her family or her friends to the degree that she had been doing so.

Q. Was there any change at or about that time in Mrs. Hill's social activities and her activities with the sewing group that you have described?

A. Well, as I say, she had periods of being fairly well and able to go about. In that case she would come to our group meetings and parties. At other times when she had these depressed periods she would prefer to be alone and would not be able to come.

Q. Could you describe, Mrs. St. John, Mrs. Hill's condition in the period that followed the summer of 1955?

A. The situation became more grave for her the following summer.

The Court: More what?

The Witness: Grave.

The Court: Grave, G-r-a-v-e?

The Witness: Yes, more serious.

A. (Continuing) Her depressed periods were even lower and she was under the care of a psychiatrist then.

Q. I would like you to describe to the jury, Mrs. St. John, Mrs. Hill's condition during the summer of 1956, when you say that she became lower.

A. Well, she changed completely in these depressed pe-
[fol. 555] riods which came in waves, ups and downs. Her eyes had this lost and I would say discouraged expression. Her face hadn't its usual sparkling expression of gaiety. Her hair was rather unmanageable, perhaps. She didn't have the same joy and enjoyment in her pretty clothes and she was an entirely different person. She had to force herself to see her friends and avoided it when she could.

Q. Were there occasions, Mrs. St. John, when, in your presence, Mrs. Hill was crying and tearful during this period?

A. No, I never saw her in tears.

Q. Was there any change at that time or any further change in the frequency of her social engagements in which you participated?

A. Yes. They were much fewer. As I say, she would take long walks alone on the beach and retreat from certain things that the rest of us would be doing. She couldn't keep up with it.

Q. Can you describe just in brief, in general terms, what Mrs. Hill's condition has been following that summer of 1956?

A. She had the same periods of depression followed by perhaps a slight rise, the same periods of ups and down, and she is not well; she is not a well woman.

Q. Has that continued to date?

A. Yes.

Q. At any time following the summer of 1955, when you first noticed the change in Mrs. Hill's condition, had she resumed social activities to the same degree that she had engaged in them prior to that time?

A. Not to the full extent, no.

[fol. 556] Q. At any time, Mrs. St. John, subsequent to that summer of 1955, when you first met Mrs. Hill—

Mr. Zoeller: Withdrawn.

Q. At any time subsequent to the summer of 1955, when you first noticed a change in Mrs. Hill, had she ever been the same as when you first knew her in 1952, when she moved to Old Greenwich, Connecticut?

A. No, sir.

Mr. Zoeller: I have no further questions.

Cross examination.

By Mr. Malino:

Q. You say that Mrs. Hill made a change, that you noticed a change in her in the summer of 1955.

A. Yes, sir.

Q. Did that continue to the end of 1955?

A. Well, it was a question of ups and downs. The summer period started a down slope for her.

Q. What do you mean by periods? I mean, what was the length of these periods?

A. Well, perhaps a month or two, three months perhaps she would be on the upswing, which would go very high, perhaps, and then when she went down, she would be in despair.

Q. Do you remember at all—I mean, are you clear as to the time element—this is now seven years ago—in 1955 are you clear as to the time element of these ups and downs?

A. Of those waves, no, sir.

Q. Would you say that that continued through January and February of 1956?

A. Yes, I think it continued through.

[fol. 557] Q. The ups and downs?

A. Yes.

Q. It was very noticeable, wasn't it?

A. Yes.

Q. And anybody could notice it who knew her?

A. Yes, sir.

Q. Do you know whether a few years ago she joined a golf club and was playing golf?

A. No, Betty Hill never played golf. Her husband joined a golf club, but she does not play golf.

Q. Do you know if she tried to play?

A. I don't think she did. She is not athletic.

Q. Do you know whether she joined a swimming club a few years ago?

A. Yes, they did.

Q. And that she swims?

A. She does swim, yes, sir.

Q. You said she resumed some of her activities but not to the same extent. Did she resume her activities in the PTA?

A. She occasionally accepted a job for the PTA, yes.

Q. And also in this PEO, which is the sewing circle? Is that right?

A. No, that's another organization.

Q. Is that another organization?

A. Yes. She occasionally attended those meetings, too.

Q. Are you a member of PEO?

A. No, sir.

Q. I didn't understand. I am sorry.

A. She made a brave and terrific effort to carry on even though she was having treatments and tried to and was

able to run her family under these circumstances, made an effort to go to these things. She could go to them and still not be well. And that's the way she was.

Q. Did she play bridge with you?

A. Occasionally.

[fol. 558] Q. That was before 1955, before the summer of 1955?

A. Yes, we had occasional games.

Q. And occasionally in more recent years?

A. Yes, sir.

Q. Have you been intimate with Mrs. Hill?

A. I consider her one of my closest friends.

Q. What do you call her when you speak to her?

A. Betty.

Q. Is that the only name that you call her by?

A. Yes.

Q. When you introduce her to somebody, you introduce her sometimes as Betty?

A. Betty Hill, yes.

Q. And sometimes as Mrs. Hill?

A. Well, it would depend on the person I was introducing. To a child I would call her Mrs. Hill. To a contemporary I would call her Betty.

Q. Do you ever call her anything besides Betty or Mrs. Hill?

A. No.

Q. Have you ever heard any body call her anything other than Mrs. Hill or Betty?

A. Her mother used to call her Elizabeth.

Q. Anybody else call her anything else in your presence?

A. I don't think I have ever heard her called anything else.

Q. Did you ever hear her call herself anything other than Betty or Elizabeth or Mrs. Hill?

A. No.

Q. Did you ever hear of the name Elizabeth Selfridge Hill?

A. Well, that's her maiden name, yes.

Q. That's not her maiden name, is it?

A. No. Elizabeth Selfridge was her maiden name.

[fol. 559] Q. You knew that, didn't you?

A. Yes.

Q. How long have you known that?

A. Almost as long as I have known Betty Hill.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. Mrs. St. John, you read the novel The Desperate Hours, didn't you?

A. Yes, I did.

Q. And that was when it first came out?

A. Shortly after.

Q. After you had read it you went to Mrs. Hill, didn't you?

A. I don't remember making a particular visit to her because I had read the book. I probably saw her as I always saw her almost daily.

Q. Didn't you say to her: "This is your story"?

A. No, sir.

Q. Do you know a Miss Elsie MacKenzie?

A. I know a Dorothy MacKenzie.

Q. That's her sister-in-law, I believe.

A. Oh, Elsie, yes. She lives in Philadelphia. I do.

Q. And do you remember the fall of 1954, when Miss MacKenzie was here?

A. Yes, sir.

Q. And her sister-in-law, Mrs. Dorothy MacKenzie, was present?

A. Well, I met her at their home, yes.

Q. And a Mrs. Kirk was present?

A. Well, possibly. It was a party for Elsie, I assume.

Q. And a Mrs. Lennhardt was present?

A. Yes.

Q. And you were present?

A. Yes.

Q. And didn't Miss MacKenzie state to Mrs. Hill: "Your story has been written up in a book. Have you read it? [fol. 559a] Think of it, your incident has been written up in a book!" ?

A. I have no recollection of that.

Q. You don't recall that happening at all?

A. No, sir.

Q. Do you recall any mention of that book in 1954 in front of Mrs. Hill?

A. I don't recall any specific mention of it, no.

Mr. Medina: That's all.

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[fol. 560] April 13, 1962

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STANLEY R. DEAN, M.D., 247 Ocean Drive West, Stamford, Connecticut, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Dr. Dean, where are you licensed to practice medicine?

A. In Connecticut, New York, Michigan and Massachusetts.

[fol. 561] Q. Would you briefly summarize your medical training.

A. I graduated from the University of Michigan Medical School in 1934—

Q. Please try to keep your voice up.

A. —and then served a year of general internship at the Hurley Hospital in Flint, Michigan. Thereafter I went into psychiatric training. I was at the Taunton State Hospital as resident psychiatrist from 1935 to 1937, and this was combined with a research fellowship at the Boston

Psychopatic Hospital. Thereafter I continued my training at the Fairfield State Hospital in Newtown, Connecticut until 1940 and went into private practice.

Q. Would you tell us what your hospital affiliations have been up to the present time?

A. I am staff psychiatrist at the Stamford Hospital at St. Joseph's Hospital in Stamford, Connecticut.

Q. Were you at one time connected with the psychiatric clinic at Stamford Hospital?

A. Yes, sir. I was chief of the psychiatric clinic from 1940 until 1943, when I joined the Medical Corps of the Army.

Q. Dr. Dean, are you a Diplomate of the American Board of Psychiatry and Neurology?

A. Yes, sir.

Q. Would you describe what that means.

A. A Diplomate means that a doctor has met certain standards set up by a national board of medical specialists. Specifically it means that he has passed a series of examinations and has undergone training, practice and experience such as to make him acceptable to other members [fol. 562] of the medical profession, hospital boards and the public at large as a qualified and recognized specialist.

Q. Dr. Dean, have you received any specific professional honors or awards?

A. Yes, sir.

Q. Would you tell us what they were?

A. Well, I am a member of AOA, the National Medical Honorary Society. I have received an award from the New England Psychiatric Association for research in psychiatry.

Q. Dr. Dean, have you written articles in connection with your medical specialty which have been published in medical journals?

A. Yes, sir.

Q. Approximately how many?

A. Approximately 30.

Q. Would you indicate a few of the journals in which these articles appeared?

A. Various medical journals in this country and one in England. In this country the Journal of the American Medical Association, Archives of Neurology and Psychiatry, Journal of Nervous and Mental Disease, Journal of Laboratory and Clinical Medicine, and several others.

Q. Dr. Dean, is there an award that is granted annually that bears your name?

A. Yes, sir.

Q. By what institution is that award granted?

A. It's granted by the National Behavoral Science Foundation.

Q. And is that known as the Stanley R. Dean award?

A. Yes, sir.

Q. Dr. Dean, did there come a time in 1956 when Mrs. Elizabeth Hill came under your psychiatric care?

A. Yes, sir.

[fol. 563] Q. Would you tell us what that date was?

A. August 16, 1956.

Q. At that time did Mrs. Hill come to your office?

A. She did.

Q. Was she accompanied by anyone?

A. Yes, she was, by her husband.

Q. Did you conduct a separate examination of Mrs. Hill?

A. Yes, sir.

Q. Did you conduct a neurological examination of Mrs. Hill?

A. Yes, sir.

Q. Was that to determine whether there was any injury or impairment to her nervous system?

A. Yes, sir.

Q. Did you also conduct a psychiatric examination?

A. Yes, sir.

Q. Did you obtain a history from Mrs. Hill?

A. Yes, sir.

Q. Would you very briefly summarize the history that you received from Mrs. Hill?

A. Mrs. Hill told me about her health prior to the convict incident, which was good. I obtained information as to a

partial hysterectomy in 1950. She described the convict incident and her feelings of fright while it took place. She had no significant difficulties after that incident. In 1954 she experienced some anxiety and depression and was treated by a local general practitioner with hormones, tranquilizers, vitamins, and so forth. But she developed no actual disability during that time.

Q. Keep your voice up, please, Doctor.

A. She further described the article in Life Magazine which connected The Desperate Hours with her family and [fol. 564] her reaction to it, and she described the worsening of her symptoms of depression and anxiety starting with the spring or summer of 1955 and becoming progressively worse up to the time she was referred to me by a physician in Old Greenwich, Dr. Reed.

Q. Dr. Dean, is that summary which you just gave to the jury taken from notes which you made at the time of your consultation or consultations with Mrs. Hill?

Mr. Malino: Which is it, consultation or consultations? I would like to know when those notes were made.

Q. At the time of your consultation with Mrs. Hill.

A. Then and on subsequent consultations.

Q. And do you have all of your medical notes with you here in court today?

A. I have.

Q. Would you describe briefly, Dr. Dean, Mrs. Hill's appearance and complaints on the occasion of her first visit to you on August 16, 1956?

A. Yes. Mrs. Hill presented a picture of extreme depression and gloom, melancholia. She appeared haggard. Her facial expression was one of intense sadness. She cried almost continuously. She spoke in a low, barely audible voice. She expressed feelings of abject hopelessness, feelings of uselessness. She felt that she had nothing to live for. She kept repeating over and over again, "I'm licked." She expressed strong suicidal impulses and extreme agitation.

[fol. 565] Q. Did you make a provisional diagnosis at that time?

A. Yes, sir.

Q. And was that diagnosis confirmed by subsequent observation and treatment of Mrs. Hill?

A. It was.

Q. What was that diagnosis?

A. The diagnosis was severe reactive depression of psychotic proportions.

Q. Would you explain what you mean by the term "reactive depression"?

A. Yes. Reactive depression means that the breakdown has occurred as the result of a reaction of the nervous system to a severe shock caused by some external specific situation.

Q. Would you explain what you mean by the phrase "psychotic proportions"?

A. Yes. By psychotic proportions I meant to indicate that her condition was so severe as to render her disabled, so severe that she was no longer able to control her abnormal feelings and impulses.

Q. Did you initiate some form of psychiatric treatment promptly after that first consultation?

A. I did.

Q. And what was that treatment?

A. I felt we were dealing with a psychiatric emergency, that no time was to be lost, and I advised and instituted electric shock treatment.

Q. Would you describe briefly the nature and function of electric shock treatment?

A. I will try. In electric shock treatment we apply electrodes, metal electrodes, to the skull, generally to the temples of the skull, and then by means of a specialized [fol. 566] apparatus, a charge of electricity is sent through the brain. The immediate effect of it is to produce instant unconsciousness, followed rapidly by a generalized seizure very closely resembling an epileptic fit.

Q. And what is the function of electric shock therapy?

A. The function of electric shock therapy is to try to obtain as rapid relief of symptoms as possible. Electric shock therapy, among other things, among other effects, produces confusion and loss of memory. It helps the patient to forget or to blunt some of the distressing memories and worries that have plagued her mind.

Q. How many shock treatments did Mrs. Hill have in the initial series?

A. In the initial series she had six shock treatments.

Q. Over what period of time were those treatments administered?

A. Somewhat less than two weeks.

Q. What was her reaction to those treatments?

A. She improved to the extent where I felt we could then institute other types of treatment.

Q. And did you institute such other types of treatment?

A. Yes, sir.

Q. Briefly what were those other types of treatment?

A. Psychotherapy supplemented by various medications designed to help her state of mind.

Q. Would you describe, Doctor, the course of Mrs. Hill in treatment subsequent to August 1956?

A. She was quite resistant to treatment in general. She would have periods of improvement followed by periods [fol. 567] of relapse of moderate or severe degree.

It become apparent to me as time went on that I was dealing with a chronic, recurrent, persistent illness, and it became necessary eventually to institute further courses of shock treatments.

Q. When were they administered?

A. She received additional electric shock treatments in November of 1960. I gave her three shock treatments at that time and then again in January of this year. It was necessary to start in January—began on the 24th, and we are still continuing at the present time.

Q. How many shock treatments has Mrs. Hill received in the present series?

A. To date she has received 15 shock treatments.

Q. Doctor, I am now going to put to you what the law describes as a hypothetical question. I am going to ask you to assume various facts about which there has been testimony. It is a requisite of the law that I propound this question to you. I want you to follow it carefully and then at the conclusion of this hypothetical question I will put to you some further questions.

Now, Doctor, I ask you to assume the following facts:

On September 11 to 12, 1952, Mrs. Hill, who was then 43 years old, and her family were held captive in their home in Whitemarsh, Pennsylanvia by three escaped convicts for a period of 19 hours. The convicts arrived at the house in the morning while Mrs. Hill was alone with her [fol. 568] twin boys, then aged 4, and another son, then aged 11. The convicts were armed. In the late afternoon Mrs. Hill's two daughters, then aged 17 and 15, returned home. Mr. Hill returned home about two hours later. The convicts finally left the home about 3 A. M. on September 12, and during the entire period when the convicts were in the house there were no assaults upon, or molestation of, any members of the Hill family or any improper language or destructive acts on the part of the convicts. At the time the convicts were in her home Mrs. Hill was distressed and frightened but did not cry and remained calm.

After the convicts left the home, and following out instructions from the convicts, the Hill family waited 5 hours then notified the police, and they were then questioned in detail by local and state police and the F. B. I. and later by the Press. Mr. and Mrs. Hill made it clear that there had been no violence toward any member of the family and that the convicts had behaved decently under the circumstances.

The incident was widely publicized, particularly by the newspapers in the Whitemarsh-Philadelphia area. On September 22, 1952, the three convicts who had held the Hill family captive, were cornered by the New York City police in a Manhattan apartment, and two of them were shot and the third captured in a gun duel in which one

policeman was killed and another seriously wounded. A news account of the killing included a picture of the bullet riddled bodies of two of the convicts which came to Mrs. Hill's attention.

[fol. 569] Mrs. Hill and her husband cooperated in normal news coverage just after the incident but rejected all offers to publicize their experience in any manner that went beyond normal news coverage.

Mrs. Hill suffered no apparent ill effects from the incident. During the remainder of 1952 and throughout 1953 Mrs. Hill's health was very good and there were no significant medical complaints, except for a period of upset and nervousness—lasting for a few days—near the end of September 1952, for which the family doctor prescribed sedation.

In November 1952, Mrs. Hill and her family moved to Old Greenwich, Connecticut. Shortly after the move, comment and publicity about the Whitemarsh incident ceased. At the time of her arrival in Old Greenwich, Connecticut, Mrs. Hill was described as an attractive and vivacious woman, who was very outgoing and interested in civic and church activities, in addition to managing her home. Mrs. Hill also participated in normal social activity. She was able to manage her family and home efficiently, as she had done prior to September 1952.

In early 1954, a book entitled The Desperate Hours was published. The book was a fictional work about a family living in Indianapolis who are held hostage by three escaped convicts and are involved in numerous violent and melodramatic events including numerous acts of brutality [fol. 570] toward members of the family. Mrs. Hill did not read the book but after its publication comment and speculation by friends and acquaintances as to whether The Desperate Hours was the story of or connected with the Hill incident was revived to some extent.

In the summer of 1954 Mrs. Hill began to suffer nervous spells along with periods of fatigue and depression. At this time she consulted a local general practitioner who

prescribed hormones, sedatives and vitamins. She visited the general practitioner from time to time during the remainder of 1954 and during 1955. Until the summer of 1955, however, Mrs. Hill was able to perform her normal household duties. Her next door neighbor—who saw Mrs. Hill almost daily—noticed no change in Mrs. Hill's appearance or general makeup and personality. At about the beginning of 1955 Mrs. Hill learned that The Desperate Hours was being prepared as a play and was scheduled to open sometime early in 1955.

On February 28, 1955, Life Magazine published a three-page article with photographs and comment specifically connecting the incident in which the Hill Family was involved in 1952 with the novel, play and motion picture The Desperate Hours. The article contained a photograph of the former Hill home at Whitemarsh, Pennsylvania, along with photographs of the cast of The Desperate Hours reenacting scenes from the play at the Hill home. It also contained a headline from the September 12, 1952 edition [fol. 571] of the Philadelphia Daily News announcing the Hill incident. The caption for the article was "TRUE CRIME INSPIRES TENSE PLAY" and the subheading read "The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller," The Desperate Hours. The text of the article began as follows:

"Three years ago Americans all over the country read about the desperate ordeal of the James Hill family who were held prisoners in their home outside Philadelphia by three escaped convicts. Later, they read about it in Joseph Hayes' novel, The Desperate Hours, inspired by the family's experience. Now they can see the story reenacted in Hayes' Broadway play based on the book, and next year will see it in his movie, which has been filmed and is being held up until the play has a chance to pay off."

The article came to the attention of Mrs. Hill on or about February 25, 1955. At the time she was at home in the company of two other ladies. When Mrs. Hill saw the article she was visibly upset.

Following the appearance of the Life article Mrs. Hill was subject to extensive questioning and speculation on the part of friends, neighbors and acquaintances concerning what had taken place at the Hill home in 1952. Persons who had not previously known about the Hill incident were now informed of it and began asking Mrs. Hill and her [fol. 572] husband questions. These questions related principally to the relationship between the events and persons portrayed in The Desperate Hours and the Hill family and their 1952 experience. Further questioning and comment related to the role played by the Hills in the preparation of The Desperate Hours, the Life article and other publicity surrounding the book, play and motion picture. This continued through the opening of the motion picture in the fall of 1955 and thereafter. The motion picture was widely publicized and some of the advertising which emphasized the frightening and violent events of The Desperate Hours was seen by Mrs. Hill.

In the summer of 1955 Mrs. Hill consulted a psychiatrist for the first time in her life, but after four visits discontinued treatment.

In the fall of 1955 she became increasingly depressed to the point where a change in her appearance and personality became apparent to her next door neighbor, Mrs. St. John. This condition continued to worsen through 1955 and 1956. Her periods of depression increased. She became increasingly self-conscious and withdrawn to the point where she avoided leaving the house. Finally she was no longer capable of performing her household duties. She began to neglect her personal appearance, frequently wearing the same dress day after day until her husband suggested that she change to another dress.

By mid-summer of 1956 Mrs. Hill had withdrawn almost completely from her normal activities and was unable to [fol. 573] manage her home. At this point she visited her family physician, Dr. Francis Read, who referred her to you.

In addition to these facts, Doctor, will you also assume Mrs. Hill's appearance and symptoms on the occasion of her first visit to you, the history which she gave you as well as the course and progress of her condition in treatment, which you have already testified about.

Now, Doctor, do you have an opinion which you can state with reasonable certainty as to the relationship between the identification of Mrs. Hill and her family with The Desperate Hours in the Life article and Mrs. Hill's condition as you diagnosed it in August 1956?

A. Yes, I have.

Q. What is that opinion?

Mr. Medina: Your Honor, I object to the hypothetical. It does not state that the novel closely parallels the Hill incident in all aspects other than the occurrences in the house. It does not include reference to the Collier's serialization of the same novel or the Pocket Books having brought that out.

There is no proof, as stated in the hypothetical, that persons who had not previously known of the Hill incident questioned Mrs. Hill after the Life article.

It does not include reference to Mr. Hill's action in taking Mrs. Hill to Whitemarsh in 1955 to look over the house and in making sure that another reference came up to The Desperate Hours in any way, when anything came up like that, he showed it to her.

[fol. 574] Mr. Garment: Your Honor, I think this matter is proper for cross-examination. I could have included four hours worth of testimony.

The Court: I am going to overrule the objection. The hypothetical question is substantially based on the facts as have been adduced in this case.

You may, of course, Mr. Medina, in your cross-examination ask this doctor if he had known so and so, these facts which you now state, would that change his opinion.

Mr. Medina: Well, there are other omissions, but I won't go into them now.

The Court: You can do it on cross-examination.
The objection is overruled.
The question, Doctor, is what is your opinion.

Q. What is your opinion, Doctor?
A. It is my opinion that the connection related by you was the direct precipitating cause of her condition.

The Court: Of her condition?
The Witness: Of her illness at the time I saw her.

Q. Would you explain to the jury on what you base that opinion?
A. Well, here we have an average American woman, an American housewife, a mother of five children, an active member of her community, in good health, able to function in a very adequate and normal way.
[fol. 575] On September 11th three convicts broke into her house. She was alone most of the time with her children, including two 'teen-age daughters, and she was initially terrified for fear of what they may do to her. She was frightened by the possibility of rape, assault, violence—

Mr. Malino: I didn't hear any testimony to that effect at all, any place, that she was terrified or anything like that.
The Court: Overruled. That is, the Court will take judicial notice of the fact that when an incident of this kind occurs, there must be some reaction by the person. However, if the doctor is going a little far in his explanation of what happened, you can cover that in your cross-examination.
Overruled.
Mr. Malino: Exception.

Q. Go ahead, Doctor.
A. As the hours went by she felt a tremendous sense of relief that these terrible possibilities didn't occur. She wanted nothing more than to forget the whole incident after that for the sake of herself and the family.

She moved some two and a half months later to another community, in Old Greenwich, Connecticut, where again she functioned adequately and well in her home and in the community.

Then, in 1954, her attention was called to the book The Desperate Hours and again she became quite worried and anxious, because she feared that somebody would now con-
[fol. 576] nect her story, through which she had gone unscathed, with the lurid and rather horrible contents of the book and later the play.

Mr. Malino: May I have the question read? I don't remember what the question is any more.

Do you remember what the question is?

Mr. Garment: The question was addressed—

The Court: I will let him read it.

I might point out, counsel, that this is the treating doctor, and the treating doctor can testify to history or what was told to him by the patient because it was done in the course of the treatment which he was administering.

Mr. Malino: But he hasn't testified that any of this was told to him by the patient.

Mr. Garment: He is giving an explanation for his opinion.

The Court: You still want the question read?

Mr. Malino: He doesn't say he was told this by the patient. We have testimony that she never read the play or saw the picture, and he is now telling about the lurid—

The Court: You can go into that on cross-examination.

Mr. Malino: I don't know how the jury can ever get it straightened out if they rely on the doctor's testimony.

[fol. 577] Mr. Garment: Your Honor, I think Mr. Malino should hold a statement of that sort for summation.

Mr. Malino: I would like to have the question read.

The Court: No, it's a proper objection.

Mr. Malino: May I have the question read?

The Court: Yes. Read the question.

(The reporter read the last question.)

The Court: Do you remember where you were?
The Witness: I think I do, your Honor.

A. (Continuing) I believe I began to point out that she had made a good adjustment to her new life in Old Greenwich until 1954, when the book The Desperate Hours appeared and she heard about and, subsequently, about the play, and she then began to fear that people would connect her with the very things that she had initially dreaded and which had never happened; that people would connect her experiences with the lurid and terrifying experiences depicted in the book. And she developed some anxiety about that.

She had treatment, some treatment, from a local general practitioner, who prescribed sedatives, vitamins, hormone treatments—but without relief.

Finally, the very thing that she had dreaded would happen did happen. Her name was connected with the terrifying and frightening events of the book and the play by [fol. 578] the article which appeared in Life Magazine sometime in February 1955. This proved to be such a shock to her nervous system that she couldn't take it. She simply broke down.

Q. Doctor, can you state with reasonable certainty your prognosis with respect to Mrs. Hill, that is, what would be the future course of her condition?

A. I can state my opinion.

Q. Yes, with reasonable certainty.

A. This woman has been sick, and at times seriously sick, for almost seven years. I am afraid, and I believe, that this is a chronic condition which will require her to have some psychiatric observation and treatment for the rest of her life.

Q. Doctor, is it your opinion, again with reasonable certainty, that the condition that she is in now represents a continuation of the condition in which you found her in August of 1956?

A. Yes, sir.

Q. In this intervening period of time what has been the general course of her condition?

A. It has been characterized by a rather up and down course. At times she would respond to treatment; at other times she wouldn't. Her course in general has been quite unpredictable.

Q. She has had good periods, has she not?

A. She has had some good periods, yes.

Q. And she has had some bad periods?

A. Very bad.

Q. Dr. Dean, earlier in the case Mr. Hill testified as to the bills for professional services that you rendered to him [fol. 579] in connection with your treatment of Mrs. Hill, and he also testified as to the amounts that were paid and to the amounts that remained unpaid.

Mr. Garment: I would like at this point, your Honor, to offer in evidence Dr. Dean's bills—after he has had an opportunity to identify them.

Q. Are those your bills that were rendered to Mr. Hill in connection with the treatment of Mrs. Hill (handing papers to witness)?

A. Yes, sir.

Mr. Garment: I offer them in evidence.

Mr. Medina: I object to them.

There is no basis as to reasonableness.

The Court: It seems to me you are cluttering the record now. Mr. Hill has testified as to the amount. You can ask this witness whether that is the fair and reasonable value of his services, without putting the bills in.

Q. Doctor, the amounts of the bills that you rendered to Mr. Hill represent the fair and reasonable value of your professional services; do they not?

A. Yes, sir.

The Court: What was the amount?

Mr. Garment: That was put in through Mr. Hill.

Q. The total amount was approximately $7,000; is that correct? Does that refresh your recollection?

A. I don't recall the total amount.

[fol. 580] Mr. Garment: It is in the record, your Honor.

The Court: $7,317.50, I see.

Mr. Garment: Thank you. And of that amount I believe approximately $5,000 has been paid.

Mr. Medina: $5,207.50.

The Court: I stated then at that time it makes no difference if it was paid or not if the defendant is obligated to pay it.

Mr. Garment: That's all I have of the doctor.

I would like to state for the record, though, before cross-examination starts that the defendant Time, Inc. waived the right to a physical examination—that would be a psychiatric examination—of the plaintiff Elizabeth Hill, which right had been secured to them by stipulation and, further, that the defendant Time, Inc., requested and received a copy of Dr. Dean's medical report.

You may cross-examine.

The Court: Mr. Malino, you may cross-examine.

Cross examination.

By Mr. Malino:

Q. Am I correct, Doctor,—I tried to listen to your testimony very closely, Doctor. Am I correct in assuming or understanding that what you are saying to the Court [fol. 581] and jury here is that Mrs. Hill's illness in 1956, when you saw her, and since that time is due solely to the Life Magazine article?

Mr. Garment: That wasn't his testimony at all, and I don't think the question should be put in that form. The testimony was in response to a specific question that it was precipitated.

The Court: Will you accept that amendment and ask him whether it was precipitated by this article?

Mr. Malino: I don't know what that means.

Q. You said it was precipitated by the Life article.
A. Yes.
Q. Did you mean to limit your testimony to that, that it was just precipitated by the Life article but not caused by the Life article?

Mr. Garment: I object to it, your Honor. That was his testimony.
The Court: Wait a minute. Now we are getting into semantics. However, if the doctor is able to distinguish between those two words he can answer the question. It seems to the Court that the meaning of both those words is almost identical. However his understanding professionally may be different. I will permit the question.
Mr. Malino: I want to know whether Dr. Dean's present opinion is that Mrs. Hill has been suffering since 1955 solely because of the Life article. I want to know that.
[fol. 582] The Court: This is cross-examination, sir. You have wide latitude. You may ask the question in any form.
Mr. Malino: Thank you.

By Mr. Malino:

Q. I would like to know that.
A. When I stated that it was precipitated—
Q. Will you answer that yes or no, first?

Mr. Garment: Mr. Malino, I think you asked him—
Mr. Malino: Why don't you let him answer?
The Court: Let's hear the question.

Q. Is it your opinion that her condition was caused by this article, only caused by this article?
A. Her condition when I saw her was caused by the connection of the Life article with the fictitious events depicted in the book.
Q. Then it is your testimony also that if the Life article had never been published she would not have had this condition; is that right?

A. That is my conviction.

Q. That is your conviction? That is your opinion?

A. Yes, sir.

Q. Is it also your opinion that if the Life article—I am now asking you a hypothetical question—if the Life article had been—you have read the Life article, have you not?

A. Oh, yes.

Q. If the Life article—did you read it with Mrs. Hill?

A. No, sir.

[fol. 583] Q. I see. If the Life article had been precisely the same as it was except that it did not contain the name "Hill" but otherwise described or identified the Hill family, would your opinion be the same, that the article caused the condition?

A. I believe it was the identification, the connection, that produced her breakdown.

Q. But if she had been identified by reference to where she lived or other identification other than the use of the name "James Hill" or "Hill family" would your opinion be the same? Would she have had the same condition?

A. I believe that any indication by physical description, by where she lived, by her name, that would lead any person to recognize that she was the principal and her family were the principals involved in this would have produced the same identical condition.

Q. You said there was a general practitioner treating Mrs. Hill, had been treating Mrs. Hill. Do you know his name?

A. She was referred to me by Dr. Read. I consulted with him.

Q. Did you know that she had also been treated for a year or more by another doctor?

A. Yes, sir.

Q. Did you know his name?

A. Dr. Brock.

Q. You didn't refer to it in your synopsis of what Mrs. Hill told you; is that right?

A. No, sir.

Q. Is it in your notes?

A. I did refer to the fact that she had been treated by a general practitioner. I didn't name him.

[fol. 584] Q. Is it in your notes? Is his name in your notes?

A. Yes, sir.

Q. But you didn't read it?

A. (No reply.)

Q. You didn't read it just now?

Mr. Garment: I object.

The Court: That's true.

A. I didn't mention him by name.

Q. Did you leave anything else out of your notes? That's what I am really getting at.

A. I don't believe I left anything pertinent to the case out of my notes—in my opinion.

Q. Did you consult with Dr. Brock at all?

A. No.

Q. When Mrs. Hill came to you for treatments other than shock treatments, did she come alone?

A. Yes.

Q. Did she drive herself?

A. Sometimes she drove herself, when she was able to. When she wasn't, she was driven there.

Q. The first time that Mrs. Hill came to your office, did you see her?

A. Yes.

Q. Was there a Dr. Waxberg in your office?

A. Yes. He was my associate at the time.

Q. Did he see her?

A. Certainly he saw her.

Q. Did he see her before you saw her?

A. No, sir.

Q. Would you look at your notes and see whether Dr. Waxberg treated Mrs. Hill before you saw her.

A. Dr. Waxberg did not treat Mrs. Hill.

[fol. 585] Q. Would you look at your notes, please? This is in 1956 we are talking about.

Mr. Garment: Get your entry for August 1956, Doctor.

A. I have notes here in my own handwriting dated August 16, 1956, describing her first visit to me.

Q. Were you in the office the week before August 16, 1956 or were you on vacation?

A. I don't recall. I do know that she spoke to me before she came to my office to make the appointment, and she told me about it, and so did Dr. Read, over the telephone, before the appointment was made.

Q. Did you discuss this with Dr. Waxberg at all, Mrs. Hill's case?

A. Yes, to some extent.

Q. Did he see her?

A. Yes, he saw her. But Dr. Waxberg had his own patients. He was an associate of mine who had his group of patients to treat, and I had my group of patients to treat. He was not concerned with her treatment.

Q. At any time?

A. No, sir.

Q. You have been in psychiatric practice since 1934; is that right?

A. Yes, sir. Excuse me, I will correct that—no, since—well, I started training in 1935. I have been in actual practice since 1940.

Q. Have you done any general practice since that time?

A. Never.

Q. Do your records show whether at the initial meeting that you had with Mrs. Hill whether you took any tests of [fol. 586] her blood or urine or blood pressure or her pulse or anything of that sort?

A. Yes. We have blood tests and blood pressures and weights not only in the beginning of treatment but throughout her course of treatment.

Q. What was the first date that you took that?

A. August 16, 1956.

Q. Did Mrs. Hill or Mr. Hill tell you about the pendency of this lawsuit?

A. Yes, sir.

Q. In January of this year, when you say you treated her, did she tell you that the trial of the lawsuit was imminent?

A. Yes, sir.

Q. Would you say that Mrs. Hill is mentally competent and during this entire time was mentally competent?

A. Not during the entire time.

Q. Does your record show whether she was mentally competent in March of 1956? Well, your records wouldn't show that. You didn't see her until August.

A. That's correct.

Q. So that your records wouldn't show that?

A. No.

Q. Would it be your opinion that she was mentally competent in March 1956?

A. I would say so.

Q. If she signed a verification to a complaint based on the play and the Life article in March 1956 that was a rather lengthly complaint with copies of the Life article attached to it, would you say that would have any effect upon her at all?

A. You are speaking of March 1956?

Q. March 7, 1956.

A. Of course I hadn't seen her then, Mr. Malino. So really I can't say.

[fol. 587] Q. You wouldn't be able to say.

A. No.

Q. In fact, you wouldn't be able to say anything at all about these things you testified to before August 1956 except those things that you have assumed that would be natural and those things that Mr. and Mrs. Hill told you. Is that right?

Mr. Garment: I object to the form of that question.

The Court: I will allow it.

Do you understand the question, Doctor?

The Witness: Would you mind repeating it?

The Court: Read it.

(The reporter read the pending question.)

The Court: In other words, is the question, is the opinion that this doctor gave, would that be based only upon this information which he got since August 1956?

Mr. Malino: That's right.

A. On the basis of the history which gradually evolved from my treatment I was able to form some estimate or opinion of her previous condition. But it was only, of course, on the basis of the history that she furnished me.

Q. So when you said before that you could not give us an opinion as to what her condition was in March of 1956, because you weren't treating her then, that was a little bit technical, wasn't it?

[fol. 588] A. Well, there are a lot of technical things here, of course.

Q. In Mr. Garment's question he didn't refer to Mrs. Hill's partial hysterectomy in 1950. That had no connection with her condition at all?

A. I don't believe it had any connection whatsoever.

Q. I show you Plaintiffs' Exhibit 14 and ask you to look at it and ask you if you ever saw that before?

A. I don't recall whether I saw this particular one. But I have seen several of them.

Q. Mr. Hill brought them to show them to you?

A. No.

Q. You saw them on your own account?

A. Yes. I believe it was a well known case.

Q. What was a well known case?

A. It was a well known book, rather, play and subsequent movie.

Q. Did you notice by any chance that this picture came from a Chicago newspaper?

A. Yes, I did.

Q. Were you in Chicago at that time?

A. No.

Mr. Garment: Your Honor, he said he didn't remember seeing that.

The Court: His recollection was that he didn't recall seeing that one.

Q. Did Mr. or Mrs. Hill tell you at any time that on or about February 2nd or soon thereafter, 1956, Mr. Hill brought this picture back from Chicago and showed it to his wife?

A. I can't identify that particular picture, but I know that she did see various pictures of that nature.

[fol. 589] Q. And did you know that her husband showed them to her?

A. It is my recollection that he probably did show some of them to her. Others she saw herself.

Q. Would you say that showing her these pictures of scenes from the motion picture, advertisements, and references to their real life story would have affected her in any way?

A. I have already testified that her fear was that she would be identified with the victims depicted in the story, and that certainly did affect her.

Q. So that in February of 1956 she would be affected by this advertisement; is that right?

A. Yes, I believe so.

Q. Would she have been affected by the visit to the house that she made with her husband a month or two or three after the Life article came out?

A. I would imagine that she would be. I can't say with certainty.

Q. You wouldn't say that as positively as that she was affected by the Life article itself?

A. I couldn't say that as positively, no.

Q. Because you haven't been questioned about that by counsel for the plaintiff; is that right?

A. What was your question?

Mr. Malino: Read it, please.

The Court: And read the question before that.

(The reporter read the two previous questions.)

[fol. 590] A. That's a strange question to me. I can only say that I am not influenced by what my counsel asks me. I am telling the truth as I know it, sir.

Q. You know the point being made in this lawsuit, don't you?

A. Yes, I think I am familiar with it.

Q. Would you say that there was any connection between the commencement of litigation here toward the end of June 1955 and Mrs. Hill's first visit to a psychiatrist four or five weeks thereafter—any psychiatric connection? I don't mean a business connection.

A. I believe that probably played some role. There were other things that also played important roles. I think that this woman would have been equally frustrated and defeated if nothing had been done about the illness and damage that she had undergone.

Q. Did you ever know, did Mr. Hill or Mrs. Hill ever tell you at any time that during the time that Mrs. Hill was kept captive in the house her daughters telephoned her, asking her to meet them or inquiring why she had not met them at the bus stop to pick them up and bring them home?

A. Without referring to my notes, I can't recall that.

Q. You may refer to your notes, if you wish.

A. Do I have to do that?

Mr. Garment: I will concede there is no reference to that there.

Q. Would you say if that happened, if her daughters called up Mrs. Hill and inquired why she had not called for [fol. 591] them in the car, as she always did, and she told them to come home some other way, that that might have preyed on her mind?

A. I should think it would.

Q. Did Mr. or Mrs. Hill tell you what Mrs. Hill's daily routine was at Whitemarsh before the convicts came there

and what her daily routine was in Old Greenwich after she moved there?

A. Yes. I have a pretty good idea of what it was.

Q. Will you tell us what they told you?

A. Well, she had a house and five children to take care of. She did the cleaning, the cooking, a good bit of the chauffeuring. She found time to keep her children's clothing in good order, to get them off to school, to take part in various community activities. I got the impression that it was pretty much the routine of an average housewife.

Q. You mean having a 22-room house?

A. Well, that's a little bit out of the average, of course.

Q. But you knew that?

A. But she didn't use all of the rooms in the house.

Q. That's true. Did you know that she chauffeured her husband, too?

A. It's my recollection that occasionally she did.

Q. Did you think there was any possibility, as a normal woman who had had some woman's troubles, that she may have been overwhelmed by the obligations that she had to [fol. 592] her family and to outside interests, to the community, as a good citizen; that she just felt licked, as you said, because she couldn't do all the things that she felt she ought to do?

A. Mr. Malino, I do not. This is a remarkable woman. She not only was able to acquit herself creditably and well of her ordinary duties, but I think the manner in which she handled the entire convict incident is a tribute to American womanhood.

Q. I agree with you on that and I have met Mrs. Hill and anything you say about her I will agree with—except the cause of her illness.

A. Certainly her lack of hysterics, her level-headedness during that entire episode was as a different from a picture of an overwhelmed, hysterical woman as day is from night, Mr. Malino.

Q. You knew, didn't you, Dr. Dean, that she had not read the book, seen the play or seen the picture?

A. I did know that.

Q. Did you suggest that she read it?

A. No, sir.

Q. You referred to the National Behavioral Science Foundation.

A. Yes, sir.

Q. I would just like to ask you this: Whether in your opinion human behavior is a science in the same sense that mathematics, physics or chemistry is a science, or are there areas of doubt?

A. There are areas of doubt, of course.

Q. And are there many factors which must be considered in determining a cause of a condition in a human being?

A. That's true of every one of us.

[fol. 593] Q. Psychiatrists might differ?

A. I think we are pretty well agreed that every human being has a predisposition to something. Every human being carries a powder charge, and if the trigger is pulled sufficiently hard an explosion can occur. Every wire has its breaking point. It only determines when that breaking point is reached, sir.

Mr. Malino: Thank you.

Cross examination.

By Mr. Medina:

Q. The thing that disturbed Mrs. Hill was the connection between the book and her incident in Philadelphia, was it not?

A. Yes.

Q. And the September 1952 experience had been a harrowing adventure?

A. It had started out as being harrowing and left her grateful to God that she had escaped unscathed.

Q. But the September 1952 experience was a harrowing adventure, was it not, Doctor?

A. Certainly it was.

Q. And then in March of 195± she was shocked and dismayed when she heard that the novel The Desperate Hours had been published, was she not?

A. She was frightened, Mr. Medina.

Q. Wasn't she shocked and dismayed?

A. I prefer to say that she was frightened and apprehensive, because she feared that someone might connect her story up with this highly melodramatic and violent version.

Q. Isn't that your own language, Doctor?

A. It is my opinion, sir.

Q. Isn't the language "shocked and dismayed" your own language?

A. It could very well be.

[fol. 594] Q. Didn't you write to Mr. Garment in January of 1957, after you had had an examination of Mrs. Hill in 1956, giving certain opinions?

A. Yes.

Mr. Garment: Just one second. If you are going to make reference to a paper, Mr. Medina, I think you should offer it in evidence first.

Mr. Medina: I have no intention of offering it in evidence, Mr. Garment. This is cross-examination.

The Court: The objection is overruled.

Q. And didn't you state—

The Court: Did you use that term in that report that you made?

The Witness: I know I did. I am fully aware of that.

Q. Let me show you page 3 of your report, the top of this paragraph right here. Isn't it your own language that Mrs. Hill in 1954 was shocked and dismayed?

Mr. Garment: Your Honor, he should put the exhibit in evidence if he is asking this witness about the contents of it.

The Court: This comes in a different category. He does if he wants to prove prior inconsistent statements. Otherwise he doesn't have to put it in. The doctor has admitted

that he used that language, and I will allow his answer.
[fol. 595] Mr. Garment: Mr. Medina, you do not propose to offer the report?

Mr. Medina: Of course not. And you know that, Mr. Garment.

A. I did use that language. And I consider shock, dismay and fear very closely allied.

Q. But you did use the language "shocked and dismayed"?

A. Obviously I did.

Q. So there is no difficulty when I ask you whether wasn't she in March 1954 shocked and dismayed at the appearance of the novel The Desperate Hours. Isn't the answer clearly "yes"? Isn't it that simple?

A. I wish it were that simple. I did say that, and I gladly reaffirm it now.

Q. Thank you. And in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went, didn't she?

A. No. My impression was that she was afraid that she would be connected with the events of that book and that the reason for her fear or shock or dismay or allied words had to do with her fear of discovery, her fear of identification. As long as she was alien to it and people didn't connect her up with it, she could have stood that period, in my opinion, quite adequately—as she did.

Q. I ask you again, Doctor, isn't it a fact that in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went? If you want to look at the bottom of page 4 of that document you have before you to refresh your recollection, you may. I suggest you read the last [fol. 596] paragraph on that page. Perhaps it will shorten things.

A. I see nowhere here where I have said that towards the end of 1954 she felt she was whispered about. Could you refresh—

Q. Do you want to read the whole paragraph at the bottom of that page, Doctor?

A. "Mrs. Hill began to feel—"

Q. Just read it to yourself.

A. Well, to me at least—

Q. Have you read it?

A. Yes, I have.

Q. Now, can't you tell me whether or not in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went?

A. Yes. I can tell you that she did not feel that way in 1954 nor have I said that she felt that way in 1954.

Q. Isn't it a fact that in 1954 Mrs. Hill gradually became more and more self-conscious and withdrawn?

A. She became self-conscious and somewhat withdrawn, yes.

Q. In 1954 Mrs. Hill became more and more self-conscious and withdrawn; is that not correct?

A. I have already testified that she did become extremely nervous.

Q. Can't you answer yes or no, Doctor?

A. I would be glad to, if I can understand your question.

Q. Isn't it correct that in 1954, Mrs. Hill gradually became more and more self-conscious and withdrawn?

A. I think we can say she did, yes.

[fol. 597] Q. And in 1954 Mrs. Hill became anxious and depressed at the prospect of having to leave the house and of being exposed to questioning, didn't she?

A. That is not the information I received or described.

Q. Isn't it a fact that in 1954 Mrs. Hill developed muscular tension in her shoulders, at times so severe that she had difficulty in raising a cup of coffee to her mouth?

A. Not at that time, not in 1954.

Q. Isn't it a fact that Mrs. Hill in 1954 felt a peculiar generalized inward quivering, became more and more fatigued and, finally, became incapable of performing her household duties?

A. Definitely not in 1954.

Q. Didn't you write this, Doctor, in your report,—and I quote—

Mr. Garment: Now, before you start to read from the document—

The Court: Objection sustained. You can't quote from it unless it is in evidence. If there is a prior inconsistent statement, you prove it by putting that in evidence and let the jury determine whether it is inconsistent.

Q. Isn't it a fact, Doctor, that toward the latter part of 1954 her nervousness, and anxiety, and depression had become so severe that she consulted a local physician who treated her for several months?

A. That is a fact.

Q. Isn't it a fact, Doctor, that, in general, the menopause occurs on an average at the age of forty-seven?

[fol. 598] A. On an average it occurs at the age of fifty, sir. The span could be from the late forties until the middle fifties, but the average is around fifty.

Q. And isn't it a fact that in menopause depression and extreme melancholia may become a most serious manifestation?

A. It may, yes.

Q. And in menopause there may be little interest in life?

A. That's very true.

Q. And the patient may avoid other people, have little confidence in herself, be fearful and worried about trifles?

A. In general, that is possible,—in some cases, rather, it's possible.

Q. And with the menopause there may even be suicidal tendencies, sometimes carried to actual accomplishment; is that not correct?

A. In the menopause, in some cases, that's possible.

Q. And psychic disturbances quite often occur during this change of life and occasionally may progress to melancholia and hysteria; is that not correct?

A. In menopausal cases that is correct, at times.

Q. And isn't it correct, Doctor, that classically involutional melancholia is an anxious, agitated, delusional depression of the menopause?

A. I wouldn't say it's confined to the menopause. We can find depression in a variety of things, but it could be one of the symptom pictures in menopause, yes, indeed.

Q. And with involutional melancholia, anxious anticipation, restlessness, insomnia, fatigability, and irritability are common; is that not correct?

A. In some cases, yes.

[fol. 599] Q. And the mood with involutional melancholia varies from pessimism to frank depression?

A. In involutional melancholia it does, yes.

Q. And these symptoms blossom into a severe agitated delusional depression?

A. In involutional melancholia that's true.

Q. And no more profound depression is seen psychiatrically and attempts at suicide are common?

A. I would say that is a pretty good description of involutional melancholia.

Q. Mrs. Hill told you that the Life article was false, didn't she?

A. Oh, yes.

Q. Would your opinion change if the Life article were true?

The Court: Opinion as to what?

Q. As to the cause of Mrs. Hill's illness.

A. This is a hypothetical question.

Mr. Garment: It certainly is.

Mr. Medina: Thank you, Mr. Garment.

The Court: Please, gentlemen, no remarks.

The jury will disregard any remarks made by counsel.

A. (continuing) I think if the Life article were true, it would have affected her, but not nearly to the degree that it did. And for a very good reason, if I may be permitted to state that reason.

Q. So that the truth or falsity of the Life article may make a difference as to its effect upon her?

A. Yes, indeed it does.

[fol. 600] Q. Did Mrs. Hill tell you about the novel closely parallels the incidents of September 1952 in all respects other than actual occurrences in the house?

A. No, she did not. She had not read the novel.

Q. Did she tell you that the novel was serialized by Colliers and also appeared in Pocketbooks?

A. Yes.

Q. Did she tell you that Mr. Hill—

Mr. Medina: Withdrawn.

Q. You were aware, of course, that Mrs. Hill was going through her menopause at the time you examined her, were you not?

A. I found no indication of any menopause in Mrs. Hill.

Q. Did you know that Mr. Hill was absent 65 per cent of the time in 1954 and 60 per cent of the time in 1955?

A. I don't know about the exact percentage, but I know he was absent a good deal of the time in pursuit of his work.

Q. In January 1957 your prognosis was that she would go on to complete recovery within a period of one year was it not?

A. That was my hope. It proved to be false.

Mr. Medina: Can we take the morning recess now, your Honor? I would like to study this report.

The Court: You don't want to finish with this doctor first?

Mr. Medina: I would like to review this in view of the testimony.

[fol. 601] The Court: I would like to get through with both of these doctors before the luncheon recess.

Mr. Medina: I do, too.

The Court: We will take a short recess.

(A short recess was taken.)

By Mr. Medina:

Q. Doctor, you did render a written report concerning Mrs. Hill under date of January 22, 1957, didn't you?

A. Yes, sir.

Q. And this is a copy of that report?

A. Yes, sir. This was written about six months after I first saw her.

Mr. Medina: I offer it in evidence.

Mr. Garment: No objection.

(Dr. Dean's report received in evidence as Defendant Time's Exhibit M.)

Mr. Medina: At this time, with your Honor's permission, I would like to read a small portion of this report.

The Court: Unless you want to have his comment on it, I might suggest after we get through with both doctors' testimony, that then you read as much as you want.

Mr. Medina: Certainly.

Q. Did Mrs. Hill tell you that Mr. Hill was quite irate at himself for his mistake in judgment in giving a statement to the press in September 1952, Doctor?

A. No, I don't recall that.

[fol. 602] Q. It's quite usual and normal, is it not, Doctor, that psychiatric treatment should last for an extended period of time?

A. It's sometimes necessary, not always.

Q. But in a great many instances it does last for long periods of time?

A. In many instances, it does.

Q. In many instances it never ends, does it?

A. That is true. Unfortunately, sometimes it never ends.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Dr. Dean, you stated that Mrs. Hill is not in her menopause?

A. Yes.

Q. On what do you base that statement?

A. On the simple facts of the case. First of all, when she broke down in 1955 she was only about 45 years old. Secondly, she was still having her periods. She was having no hot flashes, no symptoms of menopause whatsoever that I could detect.

Q. And so far you could tell is she presently in the menopause.

A. She may be at this time. She is 52. Of course every woman goes through the menopause, Mr. Garment.

Q. Mr. Medina asked you about the September 1952 incident and put certain questions to you about the harrowing nature of that incident.

A. Yes.

Q. When Mrs. Hill commenced her treatment with you, did you endeavor to obtain some objective evidence as to [fol. 603] what her reaction had been at the time of the incident?

A. Yes, sir, I did.

Q. Briefly, tell us what you did without going into any statements that were made.

A. Well, I wanted to try to assess just how much of an effect this incident with the convicts did have on her state of mind, and although I listened to her history, I asked her if she could furnish any other indication of her state of mind, and she said that she could, that she had written to a friend of hers—I believe she called her Aunt Cokie—very shortly after the incident and was able to get a copy of the letter for me.

Q. Did she get a copy of that letter for you?

A. Not a copy, but the original.

Q. I mean the letter itself.

A. Yes, sir.

Q. In her own handwriting?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, I have.

Q. Is it in the original envelope?

A. It is.

Q. What date mark does it bear?

A. September 15, 1952, only a few days after the convicts broke in.

Q. And is that letter within that envelope in Mrs. Hill's handwriting?

A. I believe so.

Mr. Garment: Your Honor, I offer that in evidence.

Mr. Medina: I object to it.

The Court: I am going to overrule the objection. This comes under the same heading as statements made to the doctor to determine the history. This is the treating doctor, [fol. 604] and the rule is different with regard to that, than what we call a testifying doctor, and therefore I am going to overrule the objection.

Mr. Medina: It doesn't relate to a statement actually made to the doctor, your Honor.

The Court: He has said that it did. This is one of the bases for showing what her state of mind was at that particular time.

Mr. Garment: Right at the time of the actual incident.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 33.

(The envelope postmarked September 15, 1952 and letter contained therein addressed: "Dearest Cokie" received in evidence as Plaintiffs' Exhibit 33.)

The Court: When did you get this letter, Doctor, from Mrs. Hill?

The Witness: My recollection is about a month after I began to treat her, your Honor.

Mr. Garment: "Sunday night"—that would be September 14, 1952.

"Dearest Cokie, perhaps you would like to know first hand that our family is safe and unharmed after our Thursday experience. I can't write it now for it reads like a story book. But in spite of being nearly frightened to death we are really fine.

[fol. 605] "The convicts were armed when they pushed in our kitchen, but from the moment they stepped in our house they made it clear they wanted only to hide out through the day, leaving at darkness.

"They didn't add, of course, 'taking one of our cars, too.' They were courteous to me, kind to the children, respectful of our furniture and considerate of our feelings, as much as would be possible under such circumstances.

"Jimmy was a little man. There wasn't a tear or scream from any of us for nineteen hours. I suffered only in fear of what they might do at any moment. We have been surrounded by police, FBI, newspaper reporters and so forth. We are under guard as long as the men are at large.

"Don't worry. As Jimmy whispered during that afternoon, 'Today I know there is a God.' It was our prayers that saved us.

"All our love, Elizabeth."

That's all.

Recross examination.

By Mr. Medina:

Q. It's of no interest to you as to whether or not Mrs. Hill has gone through change of life at this time?

A. She is going through what I consider change of life. That she would have had regardless of her other symptomatology. Yes, she is going through a change of life now. She has stopped menstruating.

[fol. 606] Q. And that's the test?

A. Sir?

Q. That is the test?

A. It's one test. Actually, she has no hot flashes. She has no other signs of menopause to this day, such as itching and atrophy of the genital region. She has no arthritic symptoms. She has no chills or profuse sweats. All of these are as much symptoms of the menopause as a mental condition are.

Q. I thought you told us that she was 45 years old in 1955.

A. Well, let me now estimate that so as to be as exact as I can.

Q. Isn't her age of interest to you as a doctor?

A. Of course, it is, and it was my impression that she was about 45 when I first saw her in 1955.

Q. You didn't see her until 1956, did you?

A. In 1956, rather.

Q. It was your impression that she was 45 years old in 1956?

A. Oh, no. I said in 1955, Mr. Medina.

Q. But didn't you just tell us a second ago that when you first saw her it was your impression that she was 45 years old?

A. I believe what I said was that when her breakdown occurred she was about 45 years old. I saw her in 1956, more than a year later.

Q. Haven't you got any precise figure as to her age?

A. Yes, I have. I can give you her age exactly. At the time I saw her in 1956 she was aged 46. So I assume that a year before that she was 45.

Mr. Medina: Thank you.

Q. That's what your notes show.

A. Exactly.

(The witness was excused.)

[fol. 607] LAWRENCE I. KAPLAN, 55 Penn Road, Scarsdale, New York, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Dr. Kaplan, would you state your medical qualifications, please?

A. Yes.

Mr. Medina: If it will save time, I will concede the doctor's qualifications.

Mr. Garment: No, I want no concession. I want the doctor's qualifications.

A. I am a graduate of the New York University College of Medicine in 1943. I served a rotating internship at Mt. Sinai Hospital in New York and spent approximately five years in hospital residency training in the specialties of psychiatry and neurology training at Bellevue Hospital, at Mt. Sinai Hospital and at New York Hospital.

I am a diplomate of the American Board of Psychiatry and Neurology. I have been an examiner for the Board since 1949. I am certified as a qualified psychiatrist in the State of New York.

I spent approximately five years as chief panel psychiatrist of the La Farge Psychiatric Clinic, which is a clinic in Harlem for juvenile offenders. I have been a consultant in psychiatry to the District Attorney of Bronx County for approximately ten years. I spent about six years as one of the panel psychiatrists at the Quaker Emergency Service Readjustment Center, which is for the treatment of [fol. 608] homosexual offenders, and at the present time I am associate visiting neuropsychiatrist at Bellevue Hospital, Director of the Neurological Service at the Hospital for Joint Diseases, Associate Visiting Neurologist at Mt. Sinai Hospital.

I have also been consultant in psychiatry and neurology to the United States Public Health Hospital on Staten Island and the Veterans Administration Hospital in the Bronx. I belong to the usual societies in this specialty. They are about fourteen or fifteen.

Q. Dr. Kaplan, did there come a time in or about June of 1957 when I came to see you?

A. Yes, sir.

Q. Did I at that time make available to you a copy of the report of Dr. Stanley R. Dean, dated January 22, 1957, which is Defendant Time's Exhibit M?

A. Yes, sir, you did.

Q. And did you and I discuss that report?

A. We did, indeed.

Q. Subsequently, did you have occasion to meet with Dr. Dean?

A. Yes, I did.

Q. And did you and he discuss his report?

A. We discussed his report and his treatment and management of this patient.

Q. And did you have an opportunity to examine Dr. Dean's notes?

A. Yes, I did.

Q. Have you ever seen Mrs. Hill?

A. I have not.

Q. Now, Doctor, you heard the hypothetical question which I put to Dr. Dean earlier this morning?

A. Yes, I did.

[fol. 609] Mr. Garment: Mr. Medina, will you concede the hypothetical question?

Mr. Medina: To save time, yes. There is no need for repeating it.

Q. In addition to the facts stated in that hypothetical question, Dr. Kaplan, I ask you to further assume Dr. Dean's diagnosis, namely, that on August 16, 1956 he found the plaintiff Elizabeth Hill suffering from a reactive depression of psychotic proportions, which condition has continued until the present time. Do you have an opinion, Doctor, which you can state with reasonable certainty as to the relationship, if any, between the identification of the plaintiff Elizabeth Hill and her family with The Desperate Hours in the Life article of February 1955 and the condition in which Dr. Dean found Mrs. Hill in August of 1956?

A. Yes, I have an opinion.

Q. What is that opinion?

A. In my opinion, the identification of the patient in this publicity in Life Magazine was the precipitating cause of her reactive depression, which was a psychotic depression.

Q. Would you state to the jury the basis upon which you reach that opinion?

A. Yes. On the basis of all of the information which I have about this patient—since I have never examined her, but only have learned about her from Dr. Dean and from his notes—this patient was a well organized and well adjusted individual up to the time of the incident in Sep- [fol. 610] tember of 1952, and thereafter as well, adjusting to this and compensating for the experience which she had very well.

She did have periods of anxiety and depression which were never psychotic, which never disabled her and which were related, largely, as Dr. Dean has mentioned, to her fear of being associated with the book and the play and the picture The Desperate Hours, although in fact it was not about her. And when her fears were realized by the publicity which occurred, she then became much more severely depressed, became agitated, disheveled, and her total adjustment disappeared and she developed a psychotic depression which was manifested by all of the symptoms Dr. Dean has described here and which required somatic treatment, that is, electric shock therapy, that is, to help eliminate it and improve it.

In my opinion, this kind of incident, this kind of sudden relighting up of an experience to which a patient has adjusted by repression and by using all of her resources so adequately, served as the precipitating cause of her depression. It really was a breakdown, very similar perhaps to what one might describe as "the straw that broke the camel's back." Had that not happened, in a sense, this patient could have remained a well adjusted woman without going into such a psychotic depression.

Mr. Garment: Thank you, Doctor.

[fol. 611] Cross examination.

By Mr. Malino:

Q. I just want to ask you one question, and that is to some extent—I think I heard you say that to some extent you based your opinion on a statement that Dr. Dean or his nurse or someone made to you that Mrs. Hill had a fear of being identified before the Life article came out.

A. Not that it was a statement made by the patient, but just an observation to which I agreed, made by her physician.

Q. In other words, Dr. Dean told you that Mrs. Hill had this fear?

A. Well, it was his interpretation that this was a lurking apprehension about identification with the incident.

Q. That's what I mean.

A. Yes.

Q. And to some extent your answer to Mr. Garment's hypothetical question is based on the assumption that that is a fact?

A. Well, I included that as a fact in terms of it being Dr. Dean's interpretation of what went on, yes.

Q. Let me put it the other way. I'm getting beyond my one question. Let me put it the other way, and that is that if it were not a fact, that is, if Mrs. Hill up to the time of the Life article had no fear of being identified, if Dr. Dean is wrong about that, would your opinion still be the same, that that Life article would have precipitated her condition?

A. I assume what you mean is if she had not expressed such fear, would my opinion be the same. Is that what you mean?

Q. No, if she didn't have the fear. I don't care if she expressed it or not.

[fol. 612] The Court: The question, as I understand it, is if Dr. Dean was wrong in coming to that conclusion, would that change the opinion that you now have?

Mr. Malino: Yes.

The Witness: It would not change the opinion, because the opinion and its relationship to the fear and apprehension that she had is simply a psychodynamic explanation as to why she had a psychotic depression related to this publicity. In fact, she had it related to the publicity, and we are trying to explain it so that treatment is possible on that basis.

Q. You are making an assumption now, I think, aren't you, Doctor, when you say in fact she had it due to this publicity?

A. Only on the basis of the information which I have, of course.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. If I understand your testimony correctly, the article in Life revived the experience which had taken place in 1952 and she was unable to cope with that experience at that time.

A. I don't say that it revived it. I think it did revive the memory of it. But it disturbed her because it was a falsification of this memory.

Q. Would it make any difference to you, Doctor, whether the Life article was true or false insofar as its effect upon her?

[fol. 613] A. I think it probably would make some difference. I wouldn't say that the patient would not have had a depression even if the publicity were true with a reliving of this experience. She may very well have had. But I think the fact that it was not true and that there was the constant apprehension that false things would be attributed to her family and herself made it that much worse.

Q. You have testified before in court, haven't you, Doctor?

A. I have been in a courtroom before, yes.

Q. Quite frequently, haven't you?

A. I don't know what you mean by frequently. I get to court approximately 20 to 25 times in a year.

Mr. Medina: Thank you.

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[fol. 614] April 16, 1962

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SUMMATION FOR DEFENDANT TIME, INC.

Mr. Medina: Ladies and gentlemen. I don't know of a more severe test for a jury than the one to which you are about to be put, because your job is to decide this case and mete out justice in a calm, dispassionate, logical way, looking at the facts, and not to decide this case on the basis of slamming books on the table or clenching the fist or the raising of the voice.

You have in this case a very strong emotional appeal of a man who comes in and says, "I know I am newsworthy, [fol. 615] but I have been hurt by that, and please for that reason make an exception in my case and make me not newsworthy."

It's clear of course, that any publication has not only the right, but the duty, to report newsworthy events. And that is just what we did here. And while Mr. Hill says, "I would like not to be newsworthy," the fact remains that for the rest of time, because of the fact that convicts entered his home back in September 1952, he will be newsworthy, and he is newsworthy today.

I judge that Mrs. Richard Burton will always be known as the woman whose husband was enticed by Elizabeth Taylor. But whether she likes it or not that is the fact. The young man who ran the wrong way in the Rose Bowl football game years ago will always be known for that fact. Mr. Roger Blough of U. S. Steel will always be known as the fellow who tried to raise the price of steel, whether he likes it or not. Yesterday was the 50th Anniversary of the sink-

ing of the Titanic. Some incidents there were heroic. Others were not. But the record is writ and what happened to the Titanic is obviously newsworthy. And that's the very simple issue that you have here.

Now, first let me tell you what you are not deciding, because so much has been thrown in here that it is sort of difficult to figure out just what it is. This is not a libel suit or a defamation suit. You know if we said something bad about somebody and wrong they are entitled to sue us because we did say something bad about them. But this [fol. 616] isn't that suit, and get that out of your mind, because this is not a defamation suit.

Nor is it a negligence suit. There isn't any claim here, nor can there be, as to whether we were careless or non-careless or what a reasonable man should have done.

This is a right of privacy suit, and that's all it is. And this family comes to you and says, "We are private people and you are not entitled to talk about us."

And as I said at the start, there are precisely three issues for you to pass upon in that connection.

First, was there any real connection, not a tenuous one, but a real connection, between the September 1952 incident with this family and the novel and play and motion picture The Desperate Hours? I don't mean by that it has to be inspired, although I think it clearly was; but was there a connection? And if there was a connection between those two newsworthy events, that's the end of this case, because we, as a publication going throughout this country, are entitled to report upon newsworthy events. That is a right guaranteed to us by the Constitution of the United States.

People tend to sneer at rights these days, you know; but the fact remains if we are going to have a press that reports correctly events which occur and newsworthy happenings, that that right should be observed.

So that your first question is: Was there a connection between the event and the play? And if there was, that's [fol. 617] just the end of this case. It is just as simple as

that. And that's why I want to keep emphasizing that, because at that point we have reported something or two events which are newsworthy. If we just made this up, if there was not any connection, we just dreamt it up, obviously at that point we are not reporting any newsworthy event. But if there was a connection that's end of this case.

Now, the second problem we have to deal with, even if there were not a connection, if we truly believed that there was a connection, that's the end of this case. If Mr. Prideaux, when he wrote, and Miss Ecker, or Mrs. Ludwig, when she checked, truly believed that there was a connection between the two and they weren't making up a phony out of whole cloth and throwing it to the American people, that also is the end of this case.

Mr. Garment: Your Honor, with great diffidence, I rise at this point to object to these statements. The law will be given to the jury by your Honor, and I think that shouldn't be part of the summation.

The Court: Yes. I might indicate to you, members of this jury, that anything that the lawyers say, as I have indicated to you earlier, is just their argument. It is not evidence. Any matters of law will be given to you by the Court and not by the lawyers.

Mr. Medina: I certainly concur in that, and I want you to pay attention to his Honor's charge. What I want to make sure of is that you listen to the charge carefully [fol. 618] and apply the law, and do it in a calm and dispassionate way. And that is going to be a difficult thing in this case.

So I say to you, first: Was there a connection; secondly, did we believe there was a connection? And, thirdly, even if you find that we didn't believe it—which I believe is unlikely—were we trying to report upon a newsworthy event in the entertainment field or were we trying to sell tickets to the play The Desperate Hours? And if we honestly were trying to report an event, a newsworthy event in the entertainment field, we are entitled to do that, and you should find for us.

Now, those are the three issues.

I think the best way to attack that initially is to point out there are two ways you can decide those three issues. One is a very short answer, short and simple, and the other is very long, involved.

For the short way you only need four exhibits. You need this picture of Mr. Hill giving his statement to the press, Exhibit A, you need the New York Times of September 13, 1952 with the headline down here and the picture of the children inside, Exhibit B, you need the play, which you all have and read, Exhibit 15, and you need Exhibit H, the three sworn complaints by these two plaintiffs before they put their present complaint in this court.

And what do you find when you look at those four exhibits? You find that the story of the incident emanated from Mr. Hill himself. He didn't have to go out there with [fol. 619] a microphone and tell everybody all these things; but he did. And you find, as Mr. Hill has testified, that the substance of that interview appeared in the New York Times of the next day, September 13, 1952.

And you find, when you look at the play, that everything that's in the New York Times is in this play other than the actual events in the house. The story in the Times opens with the state and local police and F. B. I. on the case. So does the play. The story is set in a suburb and home in the fall. So is the play—if we don't quibble as to whether September 12th is the fall or not. There is an average American family, a man and his wife in their forties, a teen-aged daughter, who's 17, a boy either 10 or 11; it doesn't make any difference. Obviously the children were pictured right in the New York Times. Obviously also, if you were going to limit your cast of characters, you can't put all the children in. But he had the two central ones, the teen-aged daughter and the young man.

It was 8:30 in the morning, 8:30 precisely by the New York Times, which said the convicts left at 3:30. It was 19 hours. That's 8:30 in the morning. And if you look at

the play, the play opens with a scene in the house with the wife saying it's 8:30—precisely at 8:30—and the husband and the daughter leave, just as they did in the New York Times and in the actual incident. And three convicts appear—three, not four or five or six,—and two of them are brothers, and they enter the house and they capture the [fol. 620] father and the daughter when they return, and the family ends up unharmed.

They just cannot be coincidence, as Mrs. Hill herself testified. Obviously Mr. Hayes, who said he had the New York Times, read it, and when he left for Florida in December 1952—and, mind you, that was just one month after the Hills moved to Greenwich—he went down to Florida and wrote his novel. And if that novel was not inspired by this story coming from Mr. Hill himself, I just don't know what I am talking about.

And you have corroboration of that, because Mr. and Mrs. Hill swore to three complaints—Mr. Hill swore to two of them and Mrs. Hill swore to a third—saying that the novel and play were based on their incident and that they were portrayed in the novel and play—right in black and white. So that they agreed with us.

Now I say that's the short simple way. You take these four exhibits and you satisfy yourself as to the truth of what I am telling you about, and that's the end of this case, despite the fact we have been here almost two weeks.

Now there is a longer way also.

I feel sorry for Mr. Hill, because he is in court today simply because of three very bad errors of judgment, and it was his own bad judgment that has brought everything upon him.

Now, first, he made the statement. That was his initial error of judgment. I suppose he should be pardoned at the time he gave it, although Mrs. Hill gave two statements, [fol. 621] one to the local papers and then she gave another statement, if you recall, mentioning how the twins would unpack as fast as she packed when they moved to Greenwich. So she didn't seem to have much difficulty about

statements to the press at that time. But that was his initial error of judgment.

Secondly, he came to the conclusion that he was going to put the thing away, put it out of his mind, he was not newsworthy, the family should forget it, no one was ever going to mention this again, they were not the family that had the convicts. So he thought that he could retire from his newsworthy position. And he should have known that, of course, he never could, any more than a person on the Titanic could or the man who ran the wrong way in the Rose Bowl.

So he made that basic error of judgment. And that led to all sorts of things. When the novel first appeared and Mrs. Hill was shown it by Miss MacKenzie and she said, "Well, it is not our story," well, that was a silly way to handle it. Of course they should have come out and rolled with the punches and said, "Gee, certainly the details are different and they have made a hero out of us. But it has got a lot of essential details of that." Of course that's what they thought when they made their first complaint. But it was handled, I say, at that point in a very poor way.

And the last error of judgment occurred when the novel came out. And, if you recall, Mr. Hill said that "The novel [fol. 622] invaded our privacy with utter disregard of our family's rights." I would have expected when the novel came out in 1954 that he would have done something about it. They had at that point the Philadelphia Inquirer in February 1954 reviewing the book and they were sent a copy of this saying: "In this tense, compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past." And then it goes on to refer to Whitemarsh.

Obviously at that point he should have done something. But not a word from Mr. Hill to anyone, to Mr. Hayes, with the novel, Random House and the Literary Guild with the novel Pocketbooks, the motion picture, Colliers, all down the line, not a word to anybody until this suit was started on October 28, 1955.

All Mr. Hill had to do when that novel came out was lift up the phone or write a letter to Mr. Hayes and say, "Gee, this is awfully close to our story. I wish you would make sure that you don't have any mention made of us, because we think it may hurt us." He didn't do it. And that was his third error of judgment.

So I say to you if he hadn't had the initial announcement and story given over the microphone, if he hadn't made the wrong decision to try to creep back to a non-newsworthy status, and if he just opened his mouth and told somebody about this, that none of these things would have happened to him.

Now, there are other ways that he had an error of judgment that are a little more subtle but I think add to this [fol. 623] picture. After all, he is too-thirds a lawyer, two years at Harvard Law School, but he still certainly had some bad judgment on the stand.

You will recall that he testified on his direct examination that Mrs. Hill went to Dr. Brock in the fall of 1954. Well, of course, you can't always remember dates. But then I asked him on cross, "Well, wasn't that in July?"—a perfectly simple question, and I gave him a check that he had drawn in July and said, "Look at this." Well, he fenced around with me. He didn't want to put it from the fall of 1954 back to July. He thought those two or three months were bad. Of course, it made no real difference, but it is an endeavor to push things a little bit.

I asked him whether it wasn't a fact that his wife's condition had been diagnosed by Dr. Brock as the menopause, and he said no. So then I had to read to him from his examination before trial where he had stated precisely that: that her condition was diagnosed as menopause. Again, that's bad error of judgment. He knew perfectly well that he had testified that way before, but he thought he could get away with it.

Then there was the business where he was trying to make out that these back-door scenes in Life, where it says, "Three crises at a back door," was really the front door,

and he was asked on direct examination, "How about the doors in your house?" And he said, "Well, that was the door we always used," leaving the impression that it was the front door.

[fol. 624] And then I asked him on cross-examination, "Well, how about these doors?" And he fenced around and kept saying, "This was the door we always used," and I finally had to ask him the direct question, "Wasn't that the back door?" And he said yes. But, again, why did he have to fence about something like that? He was trying to push things a bit too far.

I think he had other mistakes in judgment: people talking to him. And he said, "I read into the questions the insinuations that were present."

There is nothing wrong with this play, nothing lurid about it. The family are unharmed. They are heroes in it. But he keeps thinking things are much worse than they really are and dressing them up. And all you have to do is to read the play to know that.

He knew his wife was having trouble, yet he cuts out a clipping of an ad from a Chicago paper, back in February of 1956, and carefully brings it home to show it to her, and he said, "When anything came up like that, I showed it to her."

He seems to be obsessed with the idea of trying to bring things to his wife's attention, such as having her go down with him—if she was really ill—and I will come to that in a minute—down with him to Whitemarsh in the fall of 1955 to check on the house. He didn't tell Dr. Dean that he was doing these things.

He knew his wife was having the menopause, and yet he was away 65 per cent of the time in 1954 and 60 per cent of the time in 1955. And I suggest to you when Mr. Hill [fol. 625] said he saw the Life article and got madder and madder, he was madder and madder at himself, for he realized the effect of his own bad judgment. And I think that was also the reason that Mrs. Hill testified, when we read from the deposition, when she saw the Life article, she

got angry. Of course, she was angry, because she realized that her husband's bad judgment had led up to these things. And, of course, neither of them told this state of affairs to Dr. Dean.

Now, lastly, with Mr. Hill, he starts a suit and he has Paramount Pictures, Random House, Literary Guild, Crowell-Collier Publishing Company, Pocket Books, Reader's Digest, and what does he do? He voluntarily discontinued as against all those named defendants other than Mr. Hayes and the theatrical defendants and ourselves. That was his action, not ours.

But I suggest to you that if any harm has come to Mr. Hill—and I very strongly doubt it has—it is because of the novel and the play and the motion picture, and not the Life article.

Now, what about Mrs. Hill? I think it is perfectly obvious, as was outlined originally by Dr. Dean, when he made his report back in January of 1957, that she was hurt by the novel when it came out because she was disturbed by it and her friends all drew it to her attention. This was no mystery to their friends. They had put two and two together. Any fool could two and two together. We weren't different from anybody else when we wrote the Life article. The friends came to her and said, "Why, [fol. 626] goodness, isn't this your story? You are in a novel." And she certainly was disturbed by that.

In fact, she was so disturbed that, as Dr. Dean wrote in 1957—not when he was on the stand last week—that "Towards the latter part of 1954 her nervousness and anxiety and depression had become so severe that she consulted a local physician, who treated her for several months."

And these other things that became before that all were before the latter part of 1954, when she went to the doctor. That was Dr. Dean's story back in 1957, when he first examined her.

So I suggest to you that with Mrs. Hill, what happened to her really was because of remarks of her friends. And they had already come to her. So that anything that hap-

pened, to my mind, after the initial publication of the novel would not have hurt her more because she was confined to her friends, unlike Mr. Hill, who was out in the business world and talking to others and may have had people mention things. So far as Mrs. Hill was concerned, the damage was done by the novel—if damage there be—and by putting two and two together.

Now, with her story of her illness I can only suggest that I approach it with some doubt in my mind. She went to Dr. Brock starting in July of 1954 for treatment of menopause and she had hormones prescribed for her. She didn't go to a psychiatrist until she went to Dr. Stephens for four times in the summer of 1955. Nothing more happened until [fol. 627] August 1956, when she went to Dr. Dean and, of course, the outcome of that series was a report, with the original going to Mr. Garment, obviously meant for this lawsuit. And her four visits to Dr. Stephens in the summer of 1955 were in the interim, between the drawing of the summons on June 27, 1955 and service of the summons and complaint on October 28, 1955. So that at that point you start off and you say she is going to one psychologist in 1955 and before she serves the complaint and another one in 1956 in order that Mr. Garment may have a basis for his complaint. And at that point, I have some doubt.

Where was Dr. Brock? We don't have Dr. Brock on the stand, the man who examined her and was treating her for menopause. We have Dr. Kaplan, who is obviously a professional witness and never saw her and whose testimony is practically worthless. And we have Dr. Dean.

The significant thing about this report of his on January 22, 1957 is that there is no mention of menopause anywhere within this four corners, and he said, "Well, I didn't think she had menopause. She had none of the signs." And yet I read him some medical statements with which he agreed, that with the menopause, which generally starts at age 47—and, incidentally, he said she was 45 in 1955 and then he changed that, she was 46 in 1955, when he first saw her—I think she was really 47, I don't think it makes any differ-

ence—but he certainly wasn't paying any attention to a [fol. 628] most important fact, which any doctor worth his salt should have paid attention to.

And then I read him some statements as to menopause and some of the psychological effects you might expect from it: Depression, extreme melancholia may become a most serious manifestation. There is little interest in life. There may even be suicidal tendencies.

And then I read him about classically involutional melancholia is an anxious, agitated, delusional, depressional menopause, and anxious anticipation, restlessness, insomnia, fatigability, and irritability are common. The mood varies from pessimism to frank depression. These symptoms blossom into a severe agitated delusional depression. No more profound depression is seen psychiatrically and attempts at suicide are common.

What more evidence did Dr. Dean need that the menopause might have something to do with it—if he was a competent psychiatrist? I suggest to you that the worst mistake the Hill family ever made was to leave Dr. Brock and go to Dr. Dean, and maybe that was because Mrs. Hill, as you will observe in this report, majored in psychology when she went to college. But when she stopped taking the hormones that Dr. Brock told her to take and she put herself in the hands of Dr. Dean, that's where there was a grave error.

And Dr. Dean, back in 1957, said that she was going to be cured in a year, and also Dr. Dean, in 1957, said: "Her content of thought centered chiefly about the invasion of [fol. 629] privacy of herself and her family as a result of the book, magazine article, stage play and movie, and she traced back the onset of her symptoms directly to those events." And he said that she had severe reactive depression "caused in my opinion by her reaction to the publicity described previously."

Obviously he was referring to the novel and the book and the motion picture and the magazine article, and if she was having trouble because of being disturbed as to

that, the magazine article would be one element amongst many of them, and I suggest to you that when he comes on the stand, as he did last week, and says it's solely the magazine article, and in view of this report back in 1957, it just doesn't make sense.

Moreover, we examined her and took her deposition at the end of 1958 and the early part of 1959, and you heard the questions and answers. She hadn't been having any more of these signs; she felt fine; she was resuming her normal activities. That's the last we heard until we walk into court. She is here when we are choosing you ladies and gentlemen as members of the jury, and then disappears.

Now, all I can say that at that point I just have some suspicion as to the testimony as to Mrs. Hill. I think the so-called medical testimony that was put before you was worthless—you can draw your own conclusion on the very matters that I have told you about—and that at most the Life article was a contributing factor after the novel and play had done whatever was harmful, if anything harmful there be in that.

[fol. 630] So may I suggest with Mrs. Hill it is not quite the desperate case which has been pictured here, and that perhaps if there was a little less of bad judgment on the part of her husband, she would be a better woman today.

Now I turn to Mr. Hayes. He had interest in the hostage theme. He had that New York Times article before him. Within six months the story of The Desperate Hours was written with all the coincidences we have outlined. And the first time that he had to tell the outside world about the inspiration of The Desperate Hours was Exhibit J, this little publication "Wings," which comes out from the Literary Guild. And he said there that he read some front-page stories, and he referred to two cases, in New York State and one in Philadelphia.

Of course the New York State case, you recall, was the Snyder case with the wife and the little girl, and the little girl was killed. So that obviously apart from the fact that those two had been held prisoner by one convict, there is

no inspiration [illegible]g from that. And if you look at his Wings article, written December 1953 which came out in 1954, the only other case is the Hill case in Philadelphia. That's what Mr. Hayes had to say before we came on the scene.

He next had to say something in January of 1955, where he wrote this little article for the New York Times, Hayes Exhibit G, entitled "Fiction out of Fact" and "Transforming Fact into Fiction," and he said that the novel and the play [fol. 631] version of it was based on various news stories. So he is perfectly clear on that. And he mentions New York again—and we have already seen that New York has nothing to do with The Desperate Hours—and he mentions Philadelphia and he also mentions California and Detroit.

Detroit, as he explained on the stand, was merely an incident of a girl being driven around in an automobile. So that could hardly be something which would inspire him. With California he said, "Well, I have lost my file, but that was a story of three convicts who picked up a man in a car on the desert, drove to his home, and were later captured when they tried to leave the home."

But he had no clippings, he had nothing to show it.

I don't blame him for not having his files. It is quite normal that he might lose it. But files can be reconstructed, and I am sure that if that story ever appeared in any newspaper anywhere Mr. Garment would have had it for his cross examination for Mr. Hayes—and he didn't. So I suggest to you that there was not any true story based on a California incident.

When he came to testify before trial here, he added another incident and he said there was a like incident in Ohio, where a family of three were shot and killed by three convicts. But again he had no clippings. For all I know, there was some fictional story that he read. But suffice it to say, there was nothing in the newspapers.

[fol. 632] And then Mr. Garment produced some other newspapers and said, "Well, here are four more instances which you have read, and maybe those inspired." And those

are Exhibit 19, and three of the clippings relate to a Pittsburgh incident, where eight convicts started out but then five of them ended up holding a woman, a 20-month-old baby and six-month-old boy hostage for a time. And then there was a second instance in Wisconsin, when two convicts killed a man and violated a girl. And then there was a Nebraska incident, where two prisoners escaped from jail, went through a series of cars, ended up with four hostages in the car, came to a farmhouse, sat there until the family arrived, at which point they took the family's car and off they went, leaving all their hostages behind.

And the fourth instance, also in Nebraska, where three wanted criminals—not convicts—and two of them happened to be brothers in that instance—went to a farmhouse, and stayed until dark, with the farmer's wife and ten-month-old baby. Obviously none of those instances in the hostage theme are like the New York Times December 13, 1952 with the Hill family becoming Hilliard, and the rest of it.

And, of course, Mr. Garment produced the Bradenton telephone directory, with Mr. Hilliard in the automobile business down there, and the only inference you can draw from that is that if he is so assiduous he certainly would have found the clippings on the California and Ohio instances that Mr. Hayes thought he had heard about.

[fol. 633] So I say to you that there is no real-life incident other than the Hill story which could possibly have been the inspiration for The Desperate Hours.

And, mind you, at the time that Mr. Hayes testified in this case in 1957, he was trying to backtrack a bit on this inspiration business, frankly. The only complaints in the case were these three that said that Mr. Hayes had based his story on the Hill family and that he was portraying the Hill family.

So that Mr. Hayes had every motive in the world at that point thinking they were after him, to try and backtrack as much as he could, and yet it is perfectly obvious that either the Hill story inspired The Desperate Hours or Mr. Hayes deliberately created that fiction—which I don't think

is a fiction—by his publication in Wings and his publication of "Fiction Out of Fact."

Certain it is that when Bradley Smith saw him on the train and asked him wasn't there a similar case in Philadelphia, Mr. Hayes certainly admitted and said yes, one of the cases occurred in Philadelphia. So that was the start of the train. And that's how we got the final information.

And then Mr. Prideaux called him and said was not there a case in Philadelphia, said that on the telephone, and he said yes. And what did Mr. Hayes think Mr. Prideaux and Mrs. Ludwig were coming down to Philadelphia for and asking to check on the Hill home?

[fol. 634] He and his manager located the Hill home. Of couse, they knew the Hill name at the point. They couldn't have found the house otherwise. They all went around and looked around and Mr. Prideaux and Mrs. Ludwig went and saw the play. And then we sent another team down, Capa, the photograph, and Miss Shevlin, and they talked with him, and all this time Mr. Hayes obviously if it were not a fact that the incident inspired the play was perfectly free to state so. He knew perfectly well that our interest in the Hill home was basically predicated on the fact of the connection between the actual occurrence and the play, and if it were not so, it was Mr. Hayes' responsibility to have said so. And, of course, he didn't, because there was a connection, and a real connection, between the two.

He was also silent when the Inquirer in 1954 said, "You see a slice out of real life," and referred to Whitemarsh and the Inquirer in 1955, Exhibit K, when it was reviewing the play said it is based on an actual incident. So that at that point he was letting things take their normal way.

He made no protest to us when our article came out to say, "Well, gee, this is incorrect." In fact he said the headline "True Crime Inspires Tense Play" was correct. I think there is no doubt that even in Mr. Hayes' mind, as he testified, the Hill incident triggered the novel. And I don't really think it important in that respect whether

you go into these little details that I have been mentioning [fol. 635] or whether you go into—as Mr. Prideaux expressed—the heart and soul of the play and the Hill incident. The heart and soul really were a normal, respectable middle class American family with their children suddenly faced with the appalling fact that three convicts were in their home holding them hostage. And that was the theme and the mood and the heart and soul of the Hill incident and of the play. And that's what Mr. Prideaux relied on in addition to the specific details.

Now I come to Mr. Prideaux. I would suppose that if he's supposed to be so venal and putting out a phony article to fool the American people, at least someone would have paid him something for it. But certainly he wasn't being paid by anyone other than Life to do the job of reporting on newsworthy events in the entertainment field. And that's precisely what he did here. He was told by Bradley Smith of the connection. He verified it with Mr. Hayes.

Incidentally, it was Mr. Hayes who said that. Mr. Prideaux couldn't remember what he said to Mr. Hayes. And if he is out here to lie to you, the easiest thing for him to do is to say, "Sure, I remember that." But he couldn't remember it. And I had to ask Mr. Hayes, "Well, do you remember the call from Mr. Prideaux?" And he said, "Sure, I do, and he asked me about the Philadelphia incident, and the play, and I said yes, there was one." But Mr. Prideaux, couldn't remember that.

[fol. 636] Now, Miss Ecker could remember that they had gone down and that was very clear in her recollection there was a connection between the two. She had the Philadelphia newspaper clippings—I don't think it's of any importance whether they had them or didn't, because they certainly had the time, but her recollection is she had them, and that's Mr. Prideaux's recollection, and of course they went through these news clippings, put together the obvious, as the Hill friends had done, and came up with the story.

And certainly if anything was newsworthy it was this play. You have a best selling novel made into a motion picture that's being held up and a Broadway play about to open. If that isn't a newsworthy event in the entertainment field, I will eat my hat.

And certainly if you talk about the Hill family being newsworthy, you can go through these headlines. Goodness, they were all around; they were newsworthy. They had hit the headlines and been treated extensively.

So you had two newsworthy events and you had a very real connection between the two. And of course putting the two newsworthy events together was a matter of interest. It's not a crime to make things interesting—that I know of—and I suppose that any newspaper or magazine wants to present interesting facts. That is what you are supposed to do. And that is what you want to read about. And that is the reason for having these media. [fol. 637] This was no publicity stunt. Miss Shevlin said sure, it was a gimmick. Well, it's a device to bring in interest, and of course you are trying to make things interesting. But you are putting together two events with a very newsworthy character and a very real connection.

And at this point, if you remember, keeping your eye on the ball, once you have got that, that's the end of this case.

Now, we have a lot of talk about the text and the changes in it and big blow-ups so that you think here is something mysterious about this text and something we have done wrong.

The only changes made in the text were to avoid redundancy. The screaming headline on the article talks of inspiration, "True Crime Inspires Tense Play." That's the theme; that's what we are talking about. You get to the body of the article. It says again it was inspired.

Sure, in the process of writing it two other mentions of "sparks off" and "moves" were deleted, obviously, because you are saying four times what you have just said twice. And that's all there is to that hullabaloo about any change in this article.

Another change was in the sentence "Directed by Robert Montgomery and expertly acted, Hayes' play is a somewhat fictionalized by heart-stopping account of how one family rose to heroism in a crisis," and a great hullabaloo because that was changed to read "The play, directed by Robert Montgomery, and expertly acted, is a heart-stopping account of how an average family rose to heroism in a crisis." [fol. 638] Obviously the two sentences are talking about different things. The first sentence, as originally written, saying the play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis, is talking of the Hill family, that it was a fictionalized version. The second sentence, as it finally came out, didn't need the word "fictionalized" any more because it is referring to the family in the play. It just says "is a heart-stopping account of how an average family rose to heroism in a crisis." So the change in the sentence dealing with the Hill family and the sentence dealing with the family in the play is supposed to be something horrible. And it is perfectly simple.

Again I warn you, as I did in my opening, of this business of the big lie technique of assertion when there is nothing to base the assertion on, and the plain fact of the matter is that this article was perfectly well written. Incidentally, when it came to Mrs. Ludwig and her testimony there was an attempt there to throw you off. She checked for accuracy, and we had two exhibits, 22 and 22-A. Originally it was all just lumped together. And of course 22-A was the actual checking copy of the final article as it appeared, and you can see the careful checking process that was gone through. She is sitting down there, going through the whole article, checking out as to what's there, making sure it's accurate. That was her job.

These three pages of a draft were lumped in with that when they were put in evidence originally, and of course [fol. 639] she had started her checking on these three pages and she couldn't check out some of the business as to the

motion picture. So she hadn't put check marks on that and she put a question mark on it, as is perfectly normal, to remind herself to check something.

So the whole thing as originally put in was put in to one lump so that you would think that the final article as checked by Miss Ecker, she left a lot of question marks and hadn't checked part. Of course, that's not the fact.

The article itself, which is 22, is carefully checked, every single word. And, of course, it's accurate.

There was no possible motive for Mrs. Ludwig or Tom Prideaux to have tried to mislead anybody with respect to this or to try to sell tickets to The Desperate Hours, as these plaintiffs would have you believe. Obviously their sole motive was to write a newsworthy story concerning the entertainment field. Obviously they believed in what they wrote.

So on the second part of this case, as to whether what they wrote was accurate or not, they certainly believed what they wrote was accurate and certainly had the motive of trying to report a newsworthy event in the entertainment field. So that on the second part of this case and in the third part of the case I say to you that you must inevitably find for us on that basis—if you don't get misled by a lot of assertions where there aren't any facts.

[fol. 640] Now, let's review.

Three events caused the final results with respect to the Hill family, and none of those events had anything to do with us. First, the convicts came into the Hill home. We have nothing to do with that. And once the convicts came into the Hill home, they were newsworthy and it was a very unusual event.

Secondly, Mr. Hayes put that story in a play, in a novel and a motion picture, and we had nothing to do with that. It certainly was that story, inspired by it. Last, Mr. Hill did not protest, he gave it initial publicity in the newspapers, he tried to stick his head in the sand, he had three errors of judgment, and it was his errors of judgment that led to these things.

Is Tom Prideaux to be convicted of a crime based on that? I know Mr. Prideaux is not a defendant in this case. But any finding against Life—and we feel responsible for what we publish and Mr. Prideaux says he is responsible for what he does—any finding for the plaintiffs in this case inevitably will have convicted Mr. Prideaux of a crime, the crime of having falsely published something he knew was wrong intentionally to help the sale of The Desperate Hours. And I suggest to you there is no possible basis in the facts of this case, no matter how much people may raise their voices, upon which any such finding can be predicated.

In that regard they are even making a claim for punitive damages in this case. Frankly, I think it's plain silly. They [fol. 641] say, "We want you to punish Life because they did something with very bad intent."

And if there is anything that isn't in this case, that is a basis for a claim for punitive damages. I will let you people handle that.

I want to thank you for the very close attention that you have given to this case. I certainly appreciate it. I want you to keep in mind that this is the last time I can talk. Inevitably there are some matters I haven't covered, something that can be pointed out, and I am just going to have to rely on you and your good sense to handle those as these things are thrown at you, because you have got a tough case if you are going to do your duty and do it in a calm, dispassionate way.

I come back to the easy, simple technique: Mr. Hill, the Times, the play, the complaints. There is a simple answer to this.

I don't think that when you get all through you will have any trouble in following that simple answer.

Thank you very much.

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[fol. 642] AFTERNOON SESSION

SUMMATION FOR PLAINTIFFS

Mr. Garment: Your Honor, ladies and gentlemen of the jury, in some ways this has been a painful case for my [fol. 643] clients, for myself and for my associates. The injuries that we have spoken about are painful to describe and call evidence about in the courtroom. And yet I think at the end of it all there will be a purpose that has been served by the work that we have done and by the prosecution of this claim.

I think, too, that you jurors must have shared with me, as this case went along, a growing feeling of amazement at some of the things that you heard and saw in this courtroom, and some of the claims that were presented, and some of the evidence that was given, the extent to which common sense was ignored.

But the theme for what I have to say was furnished by Mr. Medina in his closing statement, when he said that this is not a libel case and that there is no claim being made here that this is a libel case.

Mr. Medina certainly is right; this is not a libel case. A libel case involves a frontal attack on somebody. It involves something that can be dealt with in this same manner. It involves a false charge that is generally not believed by people in the community. It involves injury to reputation, if anything is injured.

What we are talking about in this case, what we have tried to present to you in a common sense fashion, is the right of privacy. And we have tried in this case to make that right meaningful, if it ever can be made meaningful in a lawsuit.

When a human being's privacy is violated, as that right is defined and limited by law, in most cases there is nothing [fol. 644] that he or she could do about it. When a great publication takes it upon itself to twist the news, to distort the facts, to drag private individuals into their pages for their own commercial purposes, in almost every case there is nothing that can be done about it.

In this case the defendant Time, Incorporated is charged with something of enormous gravity. We charged Time, Incorporated with having published a false article, falsely dragging the plaintiffs into the news, falsely linking them with a violent, melodramatic work of fiction for commercial purposes pure and simple.

We charged this most powerful of all news publications in the world with having done this deliberately, with knowledge of falsity, and we charged them with having brought about the permanent disability of a human being by reason of their action.

And to these charges, ladies and gentlemen, I say there has been no defense. There has been no defense that any reasonable person can say represents a defense.

What have you heard? Seven years ago this claim was made, and in that period of time, in the seven years that have elapsed, every effort has been made by this defendant to avoid having this case come to light in a courtroom before a jury of twelve ordinary citizens. The freedom of the press was their defense from the beginning to the end. But, ladies and gentlemen, once we got over that wall, once [fol. 645] we came here into this courtroom, before the twelve of you, common sense, I say, has to rule the day. And you twelve can tell better than lawyers, better than specialists, what the truth is. You can see it in the manner of a witness. You can see it in the trembling of a cheek. You can see it and hear it in ridiculous arrogant nonsense that is thrown at you hour after hour.

For seven years, ladies and gentlemen, this greatest of all news institutions has persisted in claiming that what they did was legally justified by the freedom of the press. And they have persisted in that claim through the ten days of this trial to this jury.

Now, what have they said in this courtroom to furnish words, to furnish some kind of skeleton, to furnish anything on which the freedom of the press can hang? Similarities—that's all you have heard from the beginning of the case to the end, from the mouths of the lawyers for Time, Inc. and their witnesses.

I think the short answer to all of that, in a sense, is what you have seen and read and heard. You saw the movie. You had available to you, as some of you may have read, the play. You heard Jim Hill tell what happened in his home. You heard the contemporary news accounts. What more does anybody need to reach the conclusion that the Hill incident was not The Desperate Hours and that the Hill incident did not inspire The Desperate Hours? What more did Time, Inc. need?

[fol. 646] But you also heard the author of The Desperate Hours. He sat on the witness stand and said The Desperate Hours was not the story of the Hill incident, it was not specifically inspired by the Hill incident, "I never told anybody it was inspired by the Hill incident; I never told anybody that it was the story of the Hill family."

You heard Mr. Prideaux sit on the stand and admit that he had never asked the author.

Ladies and gentlemen, the amazing thing is what you did hear from the witnesses. I know that I myself, close as my involvement is in this case, at times drew back in disbelief—and you must have—when Tom Prideaux said it was obligatory to connect the Hill family with The Desperate Hours, when Tom Prideaux said that the author doesn't necessarily know what inspires his work and that it would be a waste of time to ask him when they are proposing to do a news article saying that a work of fiction was the story of a family, when an exhibit is placed in evidence about Jim Hill being in an automobile accident and the theory of that offer is that it makes him newsworthy.

These similarities, ladies and gentlemen, simply did not exist. There were no news clippings when Life went down to do this article. They did no research. They asked nobody. They had no news clippings to produce in court for the simple reason that there had never been any. Everyone knew, everyone connected with this article knew from the start that The Desperate Hours was not connected with the Hill family or their incident and certainly was not their story.

[fol. 647] But the entire case of Time, Inc. has been built about this idea of similarities. And I say to you, ladies and gentlemen, that it was an attempt to hoodwink you.

Let me go back to Mr. Medina's opening statement at the beginning of this case. Mr. Medina started out by saying, "One of the most difficult things to contend with, both here in court and outside, is the big lie technique. And that is precisely what you are faced with here, because a charge is made that we published a false article, that we knew it was false and that we were trying to sell tickets to the play rather than to report a newsworthy event in the entertainment field. It is a serious case to us because it is a direct attack upon our integrity. It is also a serious case to Tom Prideaux, because if he did what these plaintiffs say he did he is guilty of a criminal offense and he certainly shouldn't be in our employ any more."

Then Mr. Medina went on to say that he wanted you to keep your eye on the ball when you have this big lie technique thrown at you, and then he proposed to show you and tell you about the similarities.

Now, he made a careful effort in that opening to draw every last bit of similarity, these trifles, these coincidences, these superficial details. He made every effort to fit those into some kind of theory of similarities—whether or not anybody had known about them. And here is what he did. They are small parts, but it was all done to create an [fol. 648] impression in your mind that there were similarities here.

You recall that The Desperate Hours involved a father, a mother, a 'teen-age daughter and one boy, who is aged ten. In his opening statement, talking about the Hill incident, Mr. Medina, after seven-years' preparation of this case, told you that "In September 1952 Mr. Hill and his wife, in their mid-forties, with a 'teen-age daughter and a son, aged ten, and two young children, lived in a suburban home in Philadelphia."

He left out one daughter and he stated the age of the boy as ten, when the boy's age was in fact eleven. Of

course, there was only one daughter in The Desperate Hours and the boy in The Desperate Hours was aged ten and he was appealing to your mind at that point, the creation of similarities. It was a direct misstatement of the facts.

He proceeded: "Mr. Hill and the daughter left for work." Mr. Medina knew, every newspaper account that he put in evidence made it clear, that Mr. Hill took his two daughters, not the daughter, and he dropped them off at school. But in The Desperate Hours the father and the daughter left for work. Making every effort to push this case and the Hill incident into the framework of The Desperate Hours, he misstated the facts here in the opening.

He continued:

"Two of the convicts were brothers. They came into the house, and as Mr. Hill and the daughter returned later that day, they were captured."

[fol. 649] Again one daughter. Where is the other daughter? Again the attempt to create in your mind the idea that there was this similarity: One daughter in the Hill incident, one daughter in The Desperate Hours.

Then, later on, in talking about the writing of the novel, he has Mr. Hayes taking the clipping from the New York Times, going off, writing The Desperate Hours about a family in their midforties with a seventeen-year-old daughter. He told you there was a seventeen-year-old daughter in The Desperate Hours.

Well, the Hills had a seventeen-year-old daughter; but the daughter in The Desperate Hours was nineteen years old in the book and twenty years in the play. Another misstatement.

Do you think that these were accidental, or was there an atempt to create in your mind an impression, right at the beginning of the case, that there were these similarities?

He proceeded: "And at 8:30 in the morning"—talking about the novel—"the precise hour that the convicts had arrived in the Hill incident"—8:30 in the morning. Ladies

and gentlemen, the novel, which is what he was talking about, which was what was inspired if anything was inspired by the Hill incident, has the convicts arriving at one o'clock in the afternoon. And I say to you Mr. Medina must have known that when he prepared this statement in advance and calculated to create in your minds an impression about similarities that did not exist.

[fol. 650] He went on, talking about The Desperate Hours, two brothers, convicts, and they arrived after the father and daughter had left the house, the father and the daughter had left the house just as in the real-life incident, when he knew in the real-life incident the father and his two daughters went off and the girls were dropped off at school and they stayed in the home, the convicts, and they captured the father and the daughters as they came back in the afternoon.

Was he telling you the truth in the opening statement of this case? Was he speaking for Time, Incorporated right at the beginning of this case with anything but contempt?

And the family was unharmed—talking about the novel —and the convicts left in the middle of the night, switching back to the Hill incident. But nobody would know it unless you studied these pages with the same care that we studied that Life article through these years.

And then he said to this jury: "Every single item in The Desperate Hours except for the actual incidents in the house came from the New York Times, which came from Mr. Hill's own lips."

Ladies and gentlemen, there has been no more ridiculous statement ever made in any courtroom to any jury—"every single item in The Desperate Hours except for the actual incidents in the house came from the New York Times."

Well, almost all of The Desperate Hours takes place in the house, and everything that took place outside of the house in The Desperate Hours had nothing at all to do [fol. 651] with the Hill incident. So that statement of Mr. Medina's adds up to precisely zero. But it has that sound to it of some kind of similarity. It is the most meaningless statement that any man has ever made in a lawsuit.

And it was followed by the statement to you, after all these pieces and parts had been so carefully assembled: "And I say to you that when you put those together it is an inescapable conclusion that the true crime did inspire the play, and there is no other conclusion possible. Certain it is that that was the conclusion that we reached and which we had been told and which was affirmed by Mr. Hayes because he said that the play had been based upon an incident."

Now, ladies and gentlemen, Mr. Hayes was examined before trial. Mr. Prideaux is in the employ of Time, Incorporated. You heard their testimony here. Their testimony coincided with their testimony before trial.

There was no testimony by either Mr. Hayes or Mr. Prideaux that Mr. Hayes had ever told anyone that it was based upon an incident. In every publication relating to The Desperate Hours Mr. Hayes said, time and time again, that there were many incidents, and Mr. Prideaux could not get on that witness stand and say that Mr. Hayes told him any such thing. He said he assumed the connection between The Desperate Hours and he thought it was inappropriate and unnecessary to ask the author what that relationship was.

[fol. 652] Well, now, that's the way this case started, ladies and gentlemen. That's the kind of statement that was made to you right at the outset. That's the frame upon which Time, Incorporated rests its entire case, these similarities, these non-existent similarities, these false, contrived similarities. This case is a lie from beginning to end.

And when Mr. Medina says that Mr. Garment gets worked up and shouts and throws books, I admit to you that I do all of that, and I do it because I am human and I have feelings, and in the face of that kind of contempt and arrogance you are not human unless you have feelings of anger and throw books.

How did this article come about? Is it Mr. Prideaux's sole responsibility? Is it something that just happened? Are we here in this courtroom after seven years simply because there was something inadvertent?

I assure you, ladies and gentlemen, that is not the case. There has been a great effort made to put this all on Mr. Prideaux's shoulders, to make you feel that your verdict here is a verdict against Mr. Prideaux. And after a quarter century of devoted service to Life Magazine out he goes if you find against Time, Incorporated. It's hard for me to summon up words to tell you how despicable I think that is.

I will tell you where this article came from. It came from the established editorial policy of the magazine.

Now please understand me. I read the publications of Time, Incorporated, my partners read them: Time, Life, [fol. 653] Fortune. Life is an entertainment magazine. But there is a difference between entertainment and cruelty.

You remember I offered in evidence, and at the time it may have been puzzling why I offered in evidence, a foreword to a book called "How Life Gets The Story," written by Mr. Edward K. Thompson, the managing editor of Life Magazine at the time this article was published. The book was published in 1955, the year that this article was published. It is sub-titled, "Behind The Scenes In Photo-Journalism." And it is an amazingly candid statement about the editorial policy that the men who work on the magazine carry out.

Mr. Thompson outlined the basic qualities and techniques which produce—and I quote—"Life's week-to-week surprises and underlie its character." And there are four points in this list that I want to draw to your attention because they explain this article involving the Hill family. The first is the "ability to share with the reader a sense of participation." The second is "luck, which means being like a good ball team that forces its own breaks." The third is "ability to use camera equipment, reportorial skills and every imaginable production device to convey exact meanings." And the fourth is "knowing when to be bold and when to tread softly—that is, being psychologically hep."

Those are quotations.

True life stories. I put in a whole list of them. There have been many, many true life reviews of movies and [fol. 654] plays in Life Magazine. The men that man the various departments, the editor-writers, have to find stories, find an interesting approach, a newsy approach, something that will share with the reader a sense of participation. It's another word for identification, to give the reader a sense that this is more than just make-believe, that this involves human beings, flesh and blood, and so forth.

Well, that's what Tom Prideaux was on the lookout for in the fall and winter of 1954, when he heard about The Desperate Hours and when, somehow or other, word about Philadelphia and an incident involving a hostage family in Philadelphia came to his attention. And there is the second element, "luck".

And Mr. Prideaux followed that up. And being like a good ball team that forces its own breaks, he got down to Philadelphia, he saw the author, he made the arrangements for the use of the house. He didn't bother with news clippings. He didn't bother asking the author what the relationship was between this book and this incident because he knew very well after 25 years of being in the theatre and in writing that there would be no such relationship as they have been talking about here in court. And the article was arranged.

They arranged for a headline to be used in the article. They arranged to have that headline sent up to New York. And then Mr. Prideaux sat down with the managing editor and the art director and they laid out the story. There were just photographs, and he explained then what he was going to do.

[fol. 655] And bear that in mind, ladies and gentlemen, in the light of the attempt to make Tom Prideaux the goat for this whole operation, to bring him down here and make this thing a personal charge against Tom Prideaux and not against Time, Inc., that the managing editor, the man who wrote that foreward that I just read to you, was the

one who gave his approval to this article after the substance of it was explained to him.

And then Mr. Prideaux sat down to write the article, and in his first draft he was vague. He didn't even mention the Hill family in the body of the article. He made reference to a suburban Philadelphia family. He had them up in a caption. He talked mostly about the author, in the first paragraph. He referred to the fact that The Desperate Hours was a "somewhat fictionalized" account of the Hill incident.

And then it went to Mr. Kastner. Mr. Kastner for a quarter of a century has been the copy editor for Life Magazine, carrying out the editorial policy of the magazine. And if you have an opportunity to do it, ladies and gentlemen, take those exhibits, ask for them, look at them, and you will see that the first part of that first sentence is almost physically ripped through with a pencil, and "somewhat fictionalized" is stricken.

What was happening at this point? The next rule: Be specific, convey exact meanings, don't be vague—"We are involving the Hills in this."

You remember I said in my opening they might as well be hung for a sheep as well as for a lamb. "We are getting [fol. 656] the Hills into the article. We might as well do it completely." That's precisely what they did from draft to draft. What started out as a story about the author wound up as the story of the Hill family. The Desperate Hours became the story of the Hill family inspired by their experience. You can go to the theatre and see an account of how this family "rose to heroism in a crisis."

They didn't have the vaguest idea what happened to the Hill family and they couldn't have cared less.

You remember that I pointed out that the final draft of the article, with all of the changes, was initialed by Joseph Kastner and by Edward K. Thompson. It had gone through various editorial channels, everyone had participated in it, and I asked Mr. Prideaux to take all the time

he wanted and to point out one instance in which that article indicated the slightest difference to the ordinary reader between the Hill incident and The Desperate Hours. And he said that would be a waste of time.

Well, I assure you, ladies and gentlemen, that it would have been a waste of time for Mr. Prideaux, because he couldn't have done it, because that article was prepared with such care and with such accuracy in terms of the manipulation of words to avoid any ambiguity at all about the relationship between these two that you can't find a single word or phrase or picture that even suggests remotely there was a difference between the Hill incident and The Desperate Hours.

[fol. 657] Nineteen hours was dropped out of the draft because it clashed with the forty-eight hours of the actual Hill incident. "The Desperate Hours" as the running head was dropped out and "True Crime" was substituted. The size of the actual real-life family was not mentioned because it would have clashed with the four members of the family that was shown in the article.

"Somewhat fictionalized" was stricken, so that the reader of the article wouldn't be confused about this. It's the story of the Hill family.

As a matter of fact, ladies and gentlemen, "Somewhat fictionalized" was stricken and the Hills were drawn into this completely for the simple reason that the magazine felt that in this case they could be bold, and that was the last of the rules stated by Mr. Thompson, knowing when to "be bold" and when to "tread softly". They were dealing with private individuals. They were dealing with people who didn't count. They were dealing with people who were not celebrities. They were dealing with people who they felt would do nothing about this and therefore they went the whole hog and drew them completely into this nightmarish work of fiction.

I don't think that there can be any question at this point —and if there is, then more words on my part certainly won't help—in establishing that The Desperate Hours was

not the story of this family or of what happened to them or of what they did. And so we say to you that the liability of Time, Incorporated for this article has been established without any defense. They haven't even shown that any [fol. 658] one of their people read any news accounts. They have no news clippings. The files are gone. The original headline is gone. The source material is gone. The story article is gone. Every thing is gone.

Their responsibility, I say to you, is established without any defense for having published what they knew to be a basically distorted article in which the Hill family name was used essentially for purposes of trade in order to provide themselves with an interesting, dramatic article without any thought as to the consequences to the people whose name they were using.

Now what about the other people? Prideaux was one of the people who worked on the article. And I wonder whether you remember how promptly he answered my question, my last question to him, "Do you consider that you are solely responsible for this article?"—to which he said, "Yes."

Well, that's a shameful thing to have made this man do, to have him sent down here by pre-arrangement to take the responsibility for everybody else who tinkered around with the Hill name, moving it from a caption down to the body, striking out "somewhat fictionalized," without any thought whatever of the people who were involved, without any thought at all of what they had been through to begin with and what it would mean to bring them back into this again.

It is so plain that as they were manipulating the name of this family there was nothing before them but a four-[fol. 659] letter word, Hill, H-I-L-L, that in their minds was not attached to any human beings; the Hill family did not have any real existence; they couldn't think of them as people who lived in a community, who had friends, who had children, who might be offended, might be degraded, might be shocked and upset by this kind of involvement of

them in a magazine of this kind of reputation, prestige, standing and circulation.

Now, where were these men who run the magazine, who have been charged in this courtroom, as they have never been charged anywhere else before, with having published falsely and with knowledge of falsity an article of this sort? They sent Mr. Prideaux down. They brought in Laura Ecker—Mrs. Ludwig—a former employee.

Mr. Kastner was sitting there, the red-haired man, the copy editor for a quarter of a century. Mr. Medina said, "We want to be vindicated of this serious charge against our integrity." Did one of them get on the stand to say anything about this? Did Mr. Kastner get on the stand to say, "This is what I did" or "this is what I didn't do"? Did Mr. Thompson—did either of these men have the courage or dignity to come down before a jury of their peers and say what happened to defend the name of this great institution?

I say to you, ladies and gentlemen, that it was beneath them; that they are removed from the reality of life by the power of the printing presses that they hold in their hands; that they have taken the freedom of the press and [fol. 660] degraded that great amendment to our Constitution; that they consider themselves immune from legal process; that they consider themselves above logic and common sense; that they consider themselves detached from the community.

What about the other defendants? Well, I think that in a way it is tragic that an institution like this can mash up all kinds of creative people, including an author, who for the sake of publicity a quite understandable motivation, participates, doesn't know what they are doing and perhaps doesn't feel that it would be right to ask. I certainly don't know. And I imagine that's very much the case, that you do not ask Life Magazine what they are doing or why they are doing it, but they tell you, and they do it if they please.

Mr. Malino, his counsel, in effect said, "We wash our hands of them." Mr. Hayes and his associate, Mr. Erskine, testified, I would say in all fairness, frankly and honestly.

I do not think it is appropriate for me to take this question away from the jury. I will not argue for their liability or against their liability. I believe that that along with other questions is something for you to determine.

The consequences of publicity. I doubt very much that any case has shown the way human beings can be ground up by publicity and how thoughtless or indifferent or purposeful falsities, widely published, can destroy a human being.

You heard the testimony of people who knew Mrs. Hill before and after the Life article, of the changes that took [fol. 661] place in her personality, her habits her behavior. You heard the testimony of two outstandingly qualified psychiatrists, one the treating physician, the other a physician of equal standing in this state. Both testified that in their judgment, without qualification and without refutation, the collapse of this woman, the straw that broke her back was being drawn into The Desperate Hours through this false identification in Life Magazine, with the aftermath of questioning and speculation and the degrading comment that followed it.

There wasn't a word of contradiction of that testimony by any qualified expert. I put Dr. Kaplan on the stand. I prepared in advance for any contingency of an attack upon these experts. Dr. Kaplan did not examine Mrs. Hill. Dr. Kaplan is a man of outstanding reputation in this state. He gave us his opinion on a hypothetical question. They could have examined Mrs. Hill under the law of this state. They could have called an expert to testify, to raise some question. Certainly they have the resources to do that.

What did they do? They came in here and talked about menopause.

Now let me tell you something about that. This case was started in 1955 and from that time on the defendants

in this case had the legal right to conduct a medical examination of Mrs. Hill. They deliberately waived that right. They could have found out whether or not she was in the menopause by an examination through a physician of their [fol. 662] own choice. They chose, rather, to leave it to questions here in the courtroom. Insinuations. No evidence. No defense.

Dr. Dean said she wasn't in the menopause when she came to him. They say why didn't we call Dr. Brock. It makes no difference what Dr. Brock would say. We will assume that she was in the menopause, even though there is no evidence to establish that. Did that mean that she would fall apart, become permanently, completely disabled, have to go into shock treatment, submit herself to that kind of a procedure through the years?

Is there any sense to the suggestions that were made by these lawyers that Mrs. Hill underwent treatment in order to somehow give some kind of strength to this case? Can anybody here give a moment's credence to the idea that a woman would undergo shock treatments, 30 shock treatments, in order to help her lawyers in a lawsuit?

They asked why was she not here to testify during this case, but they forgot the testimony that she has undergone a series of 15 shock treatments within recent months. They raised questions about Dr. Waxberg, Mrs. Hill having said something about Dr. Waxberg. They know that shock treatment destroys the memory, that it results in the impairment of memory and that when she testified it was after she had been in treatment. She was a sick woman. Instead of having a doctor, a qualified psychiatrist examine her, they submitted her to an ordeal of two days of questioning. They rest their case on this kind of argument [fol. 663] without calling any witnesses, any responsible person, any qualified physician.

This is Time, Incorporated, ladies and gentlemen. They sponsibility. And if that power is not discharged with a hold in their hands an enormous power, an enormous resense of responsibility then all of us are lost.

What damages do we claim? Ladies and gentlemen, we served our last complaint some four years ago, and at that time we claimed compensatory damages for Mrs. Hill of $100,000 and $50,000 for Mr. Hill. We have not changed that. I cannot talk to you about any other figures. That claim was made before we knew of the permanency of her illness. I consider that the claim is modest to a point that defies description.

I want to turn now to what is the special function of this jury in this case.

You will remember that when the case began and when you were impaneled I made certain statements about punitive damages and asked you certain questions as to how you felt about a matter of that sort. I want to speak in a little bit more detail about punitive damages now.

In certain cases, the law says that a jury shall have a special function, a special power; that from the community shall be drawn 12 citizens, who will then act for the community, who will be its representatives and will have the power not only to compensate for injury, but to punish for wrongdoing so as to deter the wrongdoer and others similarly situated.

[fol. 664] Now that is a grave responsibility. The amount of punitive damages that a jury awards is in the sound discretion of the jury.

I want to state what we believe to be the basic objective of this case in terms of punitive damages and what there is about this case that justifies the work and the agony of seven years of digging through, pulling together the jigsaw puzzle of journalism to try to bring out in the light of day in a courtroom what can happen, what is done, and what should be prevented.

The law says that punitive damages—and I believe his Honor will charge you in this way, or substantially in this way—that punitive damages may be awarded by the jury when they feel that there has been legal malice.

Now, legal malice may be a number of things. I am sure you are all familiar with actual malice; spite, ill will. That's what you hear about in connection with libel suits, where prominent people hurl invective at each other, lies at each other, then come into a public place and everybody screams at each other, and it is all reported and printed, and there is a great noise around, and at the end everything remains the same, because actual malice is a human emotion. Spite and ill will are something that come from an individual beyond his control.

What we are talking about in this case, ladies and gentlemen, is something that is infinitely more wicked than anger and spite and ill will. We are talking about indifference. And if there is anything that destroys human beings, if [fol. 665] there is anything that all of us are familiar with, it is indifference and the agony that it produces. It is the sense of being nothing and nobody, of having your rights disregarded, of existing only in your own mind or your family's mind but in nobody else's mind.

And that, ladies and gentlemen, is what this case is about. Here is the most powerful of news media, proceeding with the most arrogant and complete indifference to a family of seven human beings and dragging them into the dirt and filth of The Desperate Hours for their own selfish commercial purposes.

Now, there are not many people who have the stamina or the will or the energy to fight indifference, to fight this kind of wrong when it appears in the public press. These people have done it.

This case will lose its meaning if this jury is indifferent to the possibilities that it presents. Speaking as the community, the 12 of you have, what I believe to be, an unparalleled opportunity to speak out against this kind of indifference, to speak out against falsification, to speak out against crassness, against hypocrisy, against arrogance, and against contempt for the rights of human beings.

You will have to measure what it is that can deter this kind of wrongdoer, this particular defendant. You will have to determine under all of the facts in the case what is adequate punishment and what will deter.

[fol. 666] But I say to you, ladies and gentlemen, that in order for this case to have any meaning, in order for the action of this jury to be heard, you must render a verdict in the only terms that this defendant understands, and that is in terms of a substantial award of punitive damages. And it must be an award of punitive damages that is heard not only in this courtroom but in every editorial room throughout the country. You must award punitive damages in an amount that shocks the newspaper industry.

The Court: Members of the jury, you have worked hard on this case and so I am not going to charge you at this hour and expect you to come back with a verdict sometime today. So we are going over until tomorrow morning. At that time I will give you my charge with regards to the law and then you will be able to retire to deliberate in this case.

For the last time in this trial, I am going to caution you once more, even though this trial is over to all intents and purposes, do not make up your mind as to what your verdict will be or who is responsible, if at all, until after you have heard my charge with regard to the law. And be here promptly at five minutes to ten tomorrow morning.

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[fol. 667] April 17, 1962

CHARGE OF THE COURT TO JURY

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Now, if you find a verdict for compensatory damages in any amount against one or more of the defendants, you may also award what are known as exemplary or punitive damages; that is, damages in such an amount as you believe will serve as a deterrent to such defendant or defendants

from committing a similar act in the future, or to deter others from committing such an act, or as a punishment of such defendant or defendants.

You may only award exemplary or punitive damages against such defendant or defendants if you find from the evidence that such defendant or defendants knowingly referred to the plaintiffs without first obtaining their consent, and falsely connected plaintiffs with The Desperate Hours, and that this was done knowingly or through failure to make a reasonable investigation.

You do not need to find that there was any actual ill will or personal malice toward the plaintiffs if you find a reckless or wanton disregard of the plaintiffs' rights.

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[fol. 668]

DEFENDANTS' EXHIBIT M

STANLEY R. DEAN, M.D.

122 FOREST STREET
STAMFORD, CONN.

DAVIS 3-3354

January 22, 1957

Francis A. Read, M.D.
292 Sound Beach Avenue
Old Greenwich, Connecticut

Re: Mrs. Elizabeth Hill

Dear Doctor Read:

The following is a summary of my psychiatric examinations, observation, and treatment of the above patient from August 16, 1956 to the present time:

Mrs. Hill's past history indicates that she was essentially a normal, average housewife, mother, and member of the

community until her present illness. She graduated from the University of Colorado where she majored in psychology. After graduation she traveled abroad, took additional training at the Boston School of Occupational Therapy and returned to Denver, her home town, where she worked in that field and later on was an occupational therapist at the Boston State Hospital.

She was married to James Hill at the age of 25 and has a fine family consisting of two daughters and three sons. [fol. 669] Her husband is general sales manager for a hosiery company and has always provided a very comfortable income for his family. Because her husband's work required considerable change of location, they moved frequently and the patient was always able to make an excellent adjustment to her new environment and to take an active part in the community. For example, at various times she has been a troop leader in the Girl Scouts; a member of PEO, a service organization; she was very active in the PTA, and often took a leading role in the many organizations of which she was a member. She is an attractive woman, highly intelligent, and has always carried on a normal and active social life with her friends in addition to her participation in community activities.

Then on September 11, 1952 she became a principal in a harrowing adventure which she managed with such calmness and presence of mind as very few women would have exhibited under similar circumstances and from which, it seems to me, she would have emerged unscathed were it not for the later repercussions which I shall describe below.

The adventure to which I refer occurred when on the above date three desperadoes, escaped convicts, broke into her home in White Marsh Township, Pennsylvania, and held her and her family hostage for 27 hours. I shall not go into the details of the incident which was adequately described in the newspapers at the time. Suffice it to say [fol. 670] that Mrs. Hill was alone with her three young boys when the convicts broke into her home and that upon her rested the greatest portion of the burden of level-

headedness, self-control, and common sense that may well have saved the lives of herself and her family.

It was Mrs. Hill's one desire after they left to leave the matter to the police, to forget her ordeal as soon as possible, and to resume the normal tenor of her life. To that end, they moved from Pennsylvania in November of the same year and established a new home in Old Greenwich, Connecticut. She wanted at all costs to avoid any further publicity about the matter and, as a matter of fact, she and her husband rejected several remunerative offers for magazine articles, television, and radio appearances. She was enthusiastic about coming to Old Greenwich where she would be relatively unknown and she looked forward to resuming her social activities and her community interests. She joined the PTA, taught Sunday School, belonged to a bridge club and was able to manage her household efficiently and well during the remainder of 1952 and throughout 1953.

In March 1954 she was shocked and dismayed when she heard from a close friend that a book called "The Desperate Hours" had been published and was apparently a fictionized account of her experience with the convicts in 1952. In February 1955 a play of the same title opened on Broadway and later that same month an article about the play appeared in Life Magazine profusely illustrated with scenes [fol. 671] which the actors enacted in the Hill's former home in Pennsylvania and where the Hilliards of the book and play were actually identified with the family of my patient, Mrs. Hill. This barrage of publicity came to a peak with the appearance of a movie based upon the book in the fall of 1955. In the book, the play, and the movie there were repeated suggestions of violence towards the parents and children as well as sexual innuendoes toward the daughter. Mr. and Mrs. Hill were constantly confronted by friends, acquaintances, and even strangers with embarrassing questions pertaining to those and other probabilities.

As a matter of fact, from the time the book first appeared, and increasing to a crescendo through the appear-

ance of the movie, Mrs. Hill states that her life was no longer her own. All kinds of people began asking prying questions and making suggestive remarks at gatherings and parties as well as in the community, and while shopping she was constantly put on the spot and bombarded with questions. Her daughters would come home from school, extremely upset, and tell Mrs. Hill that the other children had called them "gun molls".

Mrs. Hill began to feel that she was discussed and whispered about wherever she went. She gradually became more and more self-conscious and withdrawn. She became anxious and depressed at the prospect of having to leave the house and of being exposed to questioning. She developed muscular tension in her shoulders, at times so severe [fol. 672] that she had difficulty in raising a cup of coffee to her mouth. She felt a peculiar generalized inward quivering, became more and more fatigued, and finally became incapable even of performing her household duties. Towards the latter part of 1954 her nervousness, anxiety, and depression had become so severe that she consulted a local physician who treated her for several months and who, when she failed to improve, referred her to a psychiatrist in Greenwich in the summer of 1955. However, therapy was unsuccessful and, feeling discouraged, she discontinued treatment. She continued to be extremely depressed, felt completely unable to cope with her household duties and family problems to such an extent that she had to hire a full-time maid for the first time in her life.

Her symptoms, unfortunately, became progressively worse as the months went by. She was confused, agitated, depressed, and unable to concentrate. Life became an intolerable burden and she stated that if she had had the courage, she would have killed herself. She developed various physical symptoms of tension such as tightness in her head, spasm in the pit of her stomach, and a habit of digging her nails into her arms until she actually excoriated her skin and developed black and blue marks. In her own words, "I couldn't face any problem no matter how small,

I felt swamped, too agitated to live, felt everything was hopeless". She stopped visiting her friends, refused to accompany her husband or children to the theatre or sporting events, withdrew from people, lost interest in her appearance, would wear the same outfit several days in a row, [fol. 673] felt drained of all initiative, was unable to make decisions, cried frequently, considered herself a dismal failure, felt that she was in the way and was holding everybody back. Her sleep was disturbed, her appetite poor, and she lost about 15 pounds in weight. She regarded herself as a useless burden and believed that her condition was entirely hopeless. Again in her own words "I couldn't bear to look at myself in the mirror, I looked horrible, frowning and depressed; sometimes I was so touchy and irritable that I felt as though I would jump out of my skin; I would have to pinch my arms and dig my nails into my flesh in order to control myself; I was dead tired mentally and physically, could hardly drag one foot after the other, and found it hard to even pick up my arm to write a letter; even when I ate, I had to rest my arm on the table between bites to get strength enough to raise the fork to my lips; even my head would sag and I would have to hold my chin up in the cup or my hand; it was even an effort to breathe".

She was referred to me August 16, 1956 at which time a psychiatric examination amply corroborated all the above symptoms. She was a picture of severe depression, cried frequently, spoke in a low voice and in general exhibited extreme psychomotor retardation. A Minnesota Multiphasic Personality Inventory revealed an abnormal degree of melancholia and obsessive-compulsive-phobic features. There was no evidence of intellectual impairment. A Wechsler-Bellevue intelligence test gave her an I. Q. of 121 [fol. 674] and she revealed no hallucinations, delusions, or signs of mental deterioration. Her content of thought centered chiefly about the invasion of privacy of herself and her family as a result of the book, magazine article, stage play, and movie and she traced back the onset of her symptoms directly to those events. This seemed to be corrob-

orated, not only by her history, but by the fact that at no time in her life did she require psychiatric treatment until then.

[fol. 675] DIAGNOSTIC IMPRESSION

Severe reactive depression, caused, in my opinion, by her reaction to the publicity described previously.

Because her depression was so severe that it was felt she might be a suicidal risk, she was immediately started on electro-convulsive therapy. Fortunately, she responded favorably to that treatment and after six convulsions she had improved to the point where it was felt that intensive psychotherapy could be instituted. She is still receiving such therapy at the rate of three sessions per week and has exhibited extremely gratifying improvement. In my opinion she ought to go on to complete recovery provided that her present treatment is continued for an adequate period of time, which I estimate to be approximately another year.

Permit me to thank you for referring this very interesting case to me.

Very truly yours,

STANLEY R. DEAN M.D.
Stanley R. Dean, M.D.

SRD:at

Orig: Leonard Garment, Esq.
CC: Francis A. Read, M. D.

[fol. 676]

Certificate No. 129

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

New York County Clerk's Index No. 8139 Year 1955

JAMES J. HILL, Plaintiff,

against

TIMES, INC., Defendant.

CERTIFICATE OF COMPARISON OF TRANSCRIPT FOR FILING WITH SUPREME COURT OF THE UNITED STATES

State of New York, County of New York, ss.:

I, James McGurrin, County Clerk and Clerk of the Supreme Court, New York County, Do Hereby Certify that I have compared the foregoing pages 1 to 986 and I to V with the original of the papers included therein on file in my office and that they contain true and correct transcripts of the originals and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 31st day of December, 1965.

JAMES McGURRIN
County Clerk and Clerk of the Supreme Court,
New York County

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